

NORTH CAROLINA REGISTER

VOLUME 26 • ISSUE 13 • Pages 942 - 1004

January 03, 2012

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Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

Office of Administrative Hearings
Rules Division
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules molly.masich@oah.nc.gov (919) 431-3071
Dana Vojtko, Publications Coordinator dana.vojtko@oah.nc.gov (919) 431-3075
Julie Edwards, Editorial Assistant julie.edwards@oah.nc.gov (919) 431-3073
Tammara Chalmers, Editorial Assistant tammara.chalmers@oah.nc.gov (919) 431-3083

Rule Review and Legal Issues

Rules Review Commission
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@oah.nc.gov (919) 431-3081
Bobby Bryan, Commission Counsel bobby.bryan@oah.nc.gov (919) 431-3079

Fiscal Notes & Economic Analysis and Governor's Review

Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX
Contact: Anca Grozav, Economic Analyst osbmruleanalysis@osbm.nc.gov (919) 807-4740

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603
contact: Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603
contact: Erin L. Wynia ewynia@nclm.org

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney Karen.cochrane-brown@ncleg.net
Jeff Hudson, Staff Attorney Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
 Publication Schedule for January 2011 – December 2011

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
25:13	01/03/11	12/08/10	01/18/11	03/04/11	03/21/11	05/01/11	05/2012	09/30/11
25:14	01/18/11	12/22/10	02/02/11	03/21/11	03/21/11	05/01/11	05/2012	10/15/11
25:15	02/01/11	01/10/11	02/16/11	04/04/11	04/20/11	06/01/11	05/2012	10/29/11
25:16	02/15/11	01/25/11	03/02/11	04/18/11	04/20/11	06/01/11	05/2012	11/12/11
25:17	03/01/11	02/08/11	03/16/11	05/02/11	05/20/11	07/01/11	05/2012	11/26/11
25:18	03/15/11	02/22/11	03/30/11	05/16/11	05/20/11	07/01/11	05/2012	12/10/11
25:19	04/01/11	03/11/11	04/16/11	05/31/11	06/20/11	08/01/11	05/2012	12/27/11
25:20	04/15/11	03/25/11	04/30/11	06/14/11	06/20/11	08/01/11	05/2012	01/10/12
25:21	05/02/11	04/08/11	05/17/11	07/01/11	07/20/11	09/01/11	05/2012	01/27/12
25:22	05/16/11	04/25/11	05/31/11	07/15/11	07/20/11	09/01/11	05/2012	02/10/12
25:23	06/01/11	05/10/11	06/16/11	08/01/11	08/22/11	10/01/11	05/2012	02/26/12
25:24	06/15/11	05/24/11	06/30/11	08/15/11	08/22/11	10/01/11	05/2012	03/11/12
26:01	07/01/11	06/10/11	07/16/11	08/30/11	09/20/11	11/01/11	05/2012	03/27/12
26:02	07/15/11	06/23/11	07/30/11	09/13/11	09/20/11	11/01/11	05/2012	04/10/12
26:03	08/01/11	07/11/11	08/16/11	09/30/11	10/20/11	12/01/11	05/2012	04/27/12
26:04	08/15/11	07/25/11	08/30/11	10/14/11	10/20/11	12/01/11	05/2012	05/11/12
26:05	09/01/11	08/11/11	09/16/11	10/31/11	11/21/11	01/01/12	05/2012	05/28/12
26:06	09/15/11	08/24/11	09/30/11	11/14/11	11/21/11	01/01/12	05/2012	06/11/12
26:07	10/03/11	09/12/11	10/18/11	12/02/11	12/20/11	02/01/12	05/2012	06/29/12
26:08	10/17/11	09/26/11	11/01/11	12/16/11	12/20/11	02/01/12	05/2012	07/13/12
26:09	11/01/11	10/11/11	11/16/11	01/03/12	01/20/12	03/01/12	05/2012	07/28/12
26:10	11/15/11	10/24/11	11/30/11	01/17/12	01/20/12	03/01/12	05/2012	08/11/12
26:11	12/01/11	11/07/11	12/16/11	01/30/12	02/20/12	04/01/12	05/2012	08/27/12
26:12	12/15/11	11/22/11	12/30/11	02/13/12	02/20/12	04/01/12	05/2012	09/10/12

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NUMBER 111

EXTENDING THE GOVERNOR'S LOGISTICS TASK FORCE

By the power vested in me as Governor by the laws and Constitution of North Carolina,
IT IS ORDERED:

Executive Order Number 32, *Governor's Logistics Task Force*, is hereby extended until March 31, 2012.

This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this fifth day of December in the year of our Lord two thousand and eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall
Secretary of State





U.S. Department of Justice
Civil Rights Division

TCH:RSB:RPL:AAO:par
DJ 166-012-3
2011-3973

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

November 16, 2011

David A. Holec, Esq.
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to the annexation (Ordinance No. 11-046 (2011)) and its designation to District 1 of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on September 26, 2011.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Christian Herren, Jr.", written over a horizontal line.

T. Christian Herren, Jr.
Chief, Voting Section



U.S. Department of Justice
Civil Rights Division

TCH:RSB:KR:JDH:par
DJ 166-012-3
2011-4145

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

December 1, 2011

Floyd M. Lewis, Esq.
P. Bly Hall, Esq.
400 North Salisbury Street
Raleigh, North Carolina 27603

Dear Mr. Lewis and Ms. Hall:

This refers to Session Law 2011-408 (S.B. 315) (2011), which relates to the placement of campaign signs in highway rights-of-way for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on October 6, 2011; additional information was received on November 2, 2011.

Our analysis indicates that the submitted change does not affect voting and, therefore, is not subject to the preclearance requirement of Section 5. Accordingly, no determination by the Attorney General is required or appropriate under Section 5. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.2, 51.12, 51.13, and 51.35).

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Christian Herren, Jr.", written in dark ink.

T. Christian Herren, Jr.
Chief, Voting Section



U.S. Department of Justice
Civil Rights Division

TCH:RSB:JER:SMC:tst
DJ 166-012-3
2011-4159

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

December 1, 2011

Deborah R. Stagner, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, North Carolina 27602

Dear Ms. Stagner:

This refers to the 2011 county board of commissioners redistricting plan for Edgecombe County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on October 6, 2011.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,

for J. Eric Rich
T. Christian Herren, Jr.
Chief, Voting Section

NARROW THERAPEUTIC INDEX DRUGS DESIGNATED BY THE NORTH
CAROLINA SECRETARY OF HUMAN RESOURCES

Pursuant to N.C.G.S. §90-85.27(4a), this is a revised publication from the North Carolina Board of Pharmacy of narrow therapeutic index drugs designated by the North Carolina Secretary of Human Resources upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board.

Carbamazepine: all oral dosage forms

Cyclosporine: all oral dosage forms

Digoxin: all oral dosage forms

Ethosuximide

Levothyroxine sodium tablets

Lithium (including all salts): all oral dosage forms

Phenytoin (including all salts): all oral dosage forms

Procainamide

Theophylline (including all salts): all oral dosage forms

Warfarin sodium tablets

Tacrolimus: all oral dosage forms

**NOTICE OF FILING OF AN APPLICATION FOR PERMANENT VARIANCE
FROM OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

The Commissioner of Labor of North Carolina (“Commissioner”) hereby gives notice that, in accordance with N.C. Gen. Stat. § 95-132(b), DSM Dyneema LLC has filed, and the Commissioner has received, an application for a permanent variance from certain Occupational Safety and Health (“OSH”) Standards.

Summary of the application: On August 23, 2011, DSM Dyneema LLC filed an application for a permanent variance with the Commissioner of the North Carolina Department of Labor. If granted, the variance will allow DSM Dyneema LLC to use an Alternative Supplied Air Respirator System (Alt. SAR System) for entry into and escape from certain immediately dangerous to life and health (IDLH) atmospheres. Unless the variance is granted, the usage of the Alt. SAR System would be prohibited by OSH General Industry Standard, 29 CFR 1910.134(d)(1)(ii), Selection of Respirators, and 29 CFR 1910.134(d)(2)(i)(B), Respirators for IDLH atmospheres. 29 CFR 1910 is adopted by the Commissioner, as required by N.C. Gen. Stat. § 95-131, through incorporating 29 CFR 1910 by reference into the North Carolina Administrative Code at 13 NCAC 07F .0101.

Section of the Act under which application was filed: N.C. Gen. Stat. § 95-132(b).

Interested Persons: All interested persons are invited to submit written data, views, or arguments regarding the application to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-110; via facsimile at (919) 733-4235; or via electronic mail at erin.gould@labor.nc.gov. Written data, views, or arguments submitted by interested persons shall include a reference to the specific variance request, the complete name(s) and contact information for the individual(s) submitting the information and must be received by **5:00 p.m. on January 19, 2012.**

Affected Employers and Employees: Employers and employees affected by the application may request a hearing on the application by submitting a written request for hearing to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-110; via facsimile at (919) 733-4235; or via electronic mail at erin.gould@labor.nc.gov. In accordance with 13 NCAC 07A .0711, requests for hearing shall include: a concise statement of facts showing how the employer or employee would be affected by the relief applied for; a specification of any statement or representation in the application which is denied; a concise summary of the evidence that would be adduced in support of each denial; and any views or arguments on any issue of fact or law presented. Complete requests for hearing must be received by **5:00 p.m. on January 19, 2012.**

Jane Ammons Gilchrist
General Counsel/Agency Rulemaking Coordinator

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.
Statutory reference: G.S. 150B-21.2.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 58 - REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Real Estate Commission intends to amend the rule cited as 21 NCAC 58A .0114.

Link to agency website pursuant to G.S. 150B.19.1(c):
<http://www.ncrec.gov/rules/RuleAdditions.pdf>

Proposed Effective Date: July 1, 2012

Public Hearing:

Date: March 7, 2012

Time: 9:00 a.m.

Location: Offices of the NC Real Estate Commission, 1313 Navaho Drive, Raleigh, NC 27609

Reason for Proposed Action: Amend to change the organization and format of the Disclosure Statement so that each of the disclosures is presented as an independent question. Also, to add additional disclosures regarding septic system permits, pest infestation, additions or structural changes to the dwelling, known violations of federal or state land use laws and regulations, the existence of noise, odor, and smoke from airports, restrictions to land use imposed by land conservation programs, and the existence of leases or rental agreements to which the property is subject.

Procedure by which a person can object to the agency on a proposed rule: Any person who objects or who has a comment about the proposed rule changes may submit written comments to the rule-making coordinator, Thomas R. Miller, at NC Real Estate Commission, P. O. Box 17100, Raleigh, NC 27619.

Comments may be submitted to: Thomas R. Miller, NC Real Estate Commission, P. O. Box 17100, Raleigh, NC 27619; phone (919) 875-3700 ext. 131; fax (919) 582-9640; email legal@ncrec.gov

Comment period ends: March 7, 2012

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S.

150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Date submitted to OSBM:
- Substantial economic impact (≥\$500,000)
- Approved by OSBM
- No fiscal note required

SUBCHAPTER 58A - REAL ESTATE BROKERS

SECTION .0100 - GENERAL BROKERAGE

21 NCAC 58A .0114 RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT

(a) Every owner of real property subject to a transfer of the type contemplated by Chapter 47E of the General Statutes shall complete the following Residential Property and Owners' Association Disclosure Statement and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:

[N.C. REAL ESTATE COMMISSION SEAL]

STATE OF NORTH CAROLINA

RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT

Instructions to Property Owners

1. G.S. 47E The Residential Property Disclosure Act (G.S. 47E) ("Disclosure Act") requires owners of residential real estate (single-family homes, individual

condominiums, townhouses, and the like, and buildings with up to four dwelling units) to furnish purchasers a Residential Property and Owners' Association Disclosure Statement ("Disclosure Statement"). This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase ~~(unless the tenant is already occupying or intends to occupy the dwelling)~~ where the tenant does not occupy or intend to occupy the dwelling. A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.

2. You must respond to each of the questions on the following pages of this form by filling in the requested information or by placing a check in the appropriate box.

a. If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an attorney, engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.

b. If you check "No", you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.

c. If you check "No Representation", you ~~have no duty~~ choose not to disclose the conditions or characteristics of the property, even if you should have known of them.

d. If you check "Yes" or "No" and something happens to the property to make your Disclosure Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Disclosure Statement or correct the problem.

3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Disclosure Statement to the purchasers; and the broker must disclose any material facts about your property which they know or reasonably should know, regardless of your responses on the Disclosure Statement.

4. You must give the completed Disclosure Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "**Note to Purchasers**" below). You should give the purchaser a copy of the Disclosure Statement containing your signature and keep a copy signed by the purchaser for your records.

Note to Purchasers

If the owner does not give you a Residential Property and Owners' Association Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid without penalty to you as the purchaser. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Disclosure Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: _____
Owner's Name(s): _____
Owner(s) acknowledge having examined this Disclosure Statement before signing and that all information is true and correct as of the date signed.
Owner Signature: _____ Date _____, ____
Owner Signature: _____ Date _____, ____
Purchaser(s) acknowledge receipt of a copy of this ~~disclosure statement~~; Disclosure Statement that they have examined it before signing; that they understand that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are strongly encouraged to obtain their own ~~inspection~~ inspection(s) from a licensed home inspector or other professional.

PROPOSED RULES

Purchaser Signature: _____ Date _____, ____
Purchaser Signature: _____ Date _____, ____

Property Address/Description: _____

Regarding the property identified above, including the dwelling unit(s) and lot to be conveyed, and not sheds, detached garages or other buildings, to your knowledge is there any problem (malfunction or defect) with any of the following:

- 1. FOUNDATION, SLAB, FIREPLACES/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILINGS, INTERIOR AND EXTERIOR WALLS, ATTACHED GARAGE, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS including any modifications to them?
a. Siding is: Masonry Wood Composition/Hardboard Vinyl Synthetic Stucco Other
b. Approximate age of structure?
2. ROOF (leakage or other problem)?
a. Approximate age of roof covering?
3. WATER SEEPAGE, LEAKAGE, DAMPNES OR STANDING WATER in the basement, crawl space or slab?
4. ELECTRICAL SYSTEM (outlets, wiring, panel, switches, fixtures etc.)?
5. PLUMBING SYSTEM (pipes, fixtures, water heater, etc.)?
6. HEATING AND/OR AIR CONDITIONING?
a. Heat Source is: Furnace Heat Pump Baseboard Other
b. Cooling Source is: Central Forced Air Wall/Window Unit(s) Other
c. Fuel Source is: Electricity Natural Gas Propane Oil Other
7. WATER SUPPLY (including water quality, quantity and water pressure)?
a. Water supply is: City/County Community System Private Well Other
b. Water pipes are: Copper Galvanized Plastic Other Unknown
8. SEWER AND/OR SEPTIC SYSTEM?
a. Sewage disposal system is: Septic Tank Septic Tank with Pump Community System Connected to City/County System City/County System available Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates state law] Other
9. BUILT-IN APPLIANCES (RANGE/OVEN, ATTACHED MICROWAVE, HOOD/FAN, DISHWASHER, DISPOSAL, etc.)?

PROPOSED RULES

~~10. PRESENT INFESTATION, OR DAMAGE FROM PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS which has not been repaired?~~

~~11. DRAINAGE, GRADING OR SOIL STABILITY OF LOT?~~

~~12. OTHER SYSTEMS AND FIXTURES: CENTRAL VACUUM, POOL, HOT TUB, SPA, ATTIC FAN, EXHAUST FAN, CEILING FAN, SUMP PUMP, IRRIGATION SYSTEM, TV CABLE WIRING OR SATELLITE DISH, OR OTHER SYSTEMS?~~

Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you have any

~~13. ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES ?~~

~~14. ENVIRONMENTAL HAZARDS (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead based paint, underground storage tank, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?~~

~~15. COMMERCIAL, INDUSTRIAL, OR MILITARY NOISE, ODOR, SMOKE, — ETC. AFFECTING THE PROPERTY?~~

~~16. VIOLATIONS OF ZONING ORDINANCES, RESTRICTIVE COVENANTS OR OTHER LAND USE RESTRICTIONS, OR BUILDING CODES INCLUDING THE FAILURE TO OBTAIN PROPER PERMITS FOR ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES(S)?~~

~~17. UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS OR ENCROACHMENTS FROM OR ON ADJACENT PROPERTY?~~

~~18. LAWSUITS, FORECLOSURES, BANKRUPTCY, TENANCIES, JUDGMENTS, TAX LIENS, PROPOSED ASSESSMENTS, MECHANICS' LIENS, MATERIALMENS' LIENS, OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title to the property?~~

~~19. FLOOD HAZARD or that the property is in a FEDERALLY DESIGNATED FLOOD PLAIN?~~

~~20. PRIVATE ROAD(S) OR STREETS adjoining the property?~~
~~a. If yes, do you know of an existing owners' association or maintenance agreement to maintain the road or street?~~

~~* If you answered "Yes" to any of the above questions, please explain (Attach additional sheets, if necessary): _____

_____~~

~~In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public agency, engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.~~

~~Also regarding the property identified above, including the dwelling unit(s), any sheds, detached garages, other buildings or the lot to be conveyed, answer each of the questions below based on your actual knowledge:~~

~~Yes* No No Representation~~

~~21. Is the property subject to regulation by one or more owners' association(s) and governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot, including, but not limited to obligations to pay regular assessments~~

PROPOSED RULES

or dues and special assessments?

☐ ☐ ☐

*If you answered "No" or "No Representations" to question 21 above, you do not need to answer the remaining questions on this Disclosure Statement. If you answered "Yes" to question 21 above, you must complete the remainder of this Disclosure Statement.

22. The property is subject to the following owners' association(s) [insert N/A into any blank that does not apply]:
 (specify name) _____ whose regular assessments ("dues") are
 \$ _____ per _____. The name, address, and telephone number of the president of the owners' association or
 the _____ association _____ manager
 are: _____

(specify name) _____ whose regular assessments ("dues") are
 \$ _____ per _____. The name, address, and telephone number of the president of the owners' association or
 the association manager are: _____

23. As of the date this Disclosure Statement is signed, there are no other dues, fees, or special assessments which have been duly approved as required by the applicable declaration or bylaws, payable to an association to which the lot is subject, except:

24. As of the date this Disclosure Statement is signed, there are no unsatisfied judgments against or pending lawsuits involving the property or lot to be conveyed, the planned community or the association to which the property and lot are subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the property and lot to be conveyed, except: _____

25. The following services and amenities are paid for by the above owners' association(s) from the regular assessments ("dues"):
 (Check all that apply).

	Yes*	No	No Repr-
			sentation
Management Fees _____	☐	☐	☐
Exterior Building Maintenance of Property to be Conveyed _____	☐	☐	☐
Exterior Yard/Landscaping Maintenance of Lot to be Conveyed _____	☐	☐	☐
Common Areas Maintenance _____	☐	☐	☐
Trash Removal _____	☐	☐	☐
Recreational Amenity Maintenance _____	☐	☐	☐
Pest Treatment/Extermination _____	☐	☐	☐
Street Lights _____	☐	☐	☐
Water _____	☐	☐	☐
Sewer _____	☐	☐	☐
Stormwater Management/Drainage/Ponds _____	☐	☐	☐
Internet Service _____	☐	☐	☐
Cable _____	☐	☐	☐
Private Road Maintenance _____	☐	☐	☐
Parking Area Maintenance _____	☐	☐	☐
Gate and/or Security _____	☐	☐	☐
Other (specify) _____			

The following questions address the characteristics and condition of the property identified above, including the dwelling unit(s) and lot to be conveyed about which the owner has *actual knowledge*.

Yes No No Repr-
sentation

PROPOSED RULES

1. In what year was the dwelling originally constructed?
2. Is there any problem, malfunction or defect with the dwelling's foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications to them?
3. The dwelling's exterior walls are made of what type of material? Brick Veneer Wood
 Stone Vinyl Synthetic Stucco Composition/Hardboard Concrete Fiber Cement
 Aluminum Asbestos Other _____ (Check all that apply)
4. In what year was the dwelling's roof covering installed? (Approximate if no records are available)
5. Is there any leakage or other problem with the dwelling's roof?
6. Is there any water seepage, leakage, dampness or standing water in the dwelling's basement, crawl space, or slab?
7. Is there any problem, malfunction or defect with the dwelling's electrical system (outlets, wiring, panel, switches, fixtures, generator, etc.)?
8. Is there any problem, malfunction or defect with the dwelling's plumbing system (pipes, fixtures, water heater, etc.)?
9. Is there any problem, malfunction or defect with the dwelling's heating and/or air conditioning?
10. What is the dwelling's heat source? Furnace Heat Pump Baseboard
 Other _____
11. What is the dwelling's cooling source? Central Forced Air Wall/Window Unit(s)
 Other _____ (Check all that apply)
12. What are the dwelling's fuel sources? Electricity Natural Gas Propane Oil
 Other _____ (Check all that apply)
13. What is the dwelling's water supply source? City/County Community System
 Private Well Other _____ (Check all that apply)
14. The dwelling's water pipes are made of what type of material? Copper Galvanized
 Plastic Polybutylene Other _____ (Check all that apply)
15. Is there any problem, malfunction or defect with the dwelling's water supply (including water quality, quantity, or water pressure)?
16. What is the dwelling's sewage disposal system? Septic Tank Septic Tank with Pump Community System Connected to City/County System City/County System available Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates state law]) Other _____ (Check all that apply)
17. If the dwelling is serviced by a septic system, how many bedrooms are allowed by the septic system permit? _____

PROPOSED RULES

18. Is there any problem, malfunction or defect with the dwelling's sewer and/or septic system?
19. Is there any problem, malfunction or defect with the dwelling's systems and fixtures: central vacuum, pool, hot tub, spa, attic fan, exhaust fan, ceiling fan, sump pump, irrigation system, TV cable wiring or satellite dish, garage door openers, gas logs, or other systems?
20. Is there any problem, malfunction or defect with the dwelling's built-in appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?
21. Is there any problem with present infestation of the dwelling, or damage from past infestation of wood destroying insects or organisms which has not been repaired?
22. Is there any problem with a present infestation of ants, roaches, mice, rats, bats, fleas, bedbugs, or other pests in the dwelling or any structure on the property?
23. Is there any problem, malfunction or defect with the drainage, grading or soil stability of the property?
24. Are there any structural additions or other changes to the dwelling or other buildings on the property?
25. Have you been notified that the property is in violation of any federal or state law, local zoning ordinances, restrictive covenants, or other land-use restrictions, or building codes (including the failure to obtain proper permits for room additions or other changes/improvements)?
26. Are there any hazardous or toxic substances, materials, or products (such as asbestos, formaldehyde, radon gas, methane gas, lead-based paint) which exceed government safety standards, any debris (whether buried or covered) or underground storage tanks, or any environmentally hazardous conditions (such as contaminated soil or water, or other environmental contamination) which affect the property?
27. Is there any noise, odor, smoke, etc. from commercial, industrial, airport, or military sources which affects the property?
28. Is the property subject to any land use restrictions imposed by land conservation programs?
29. Is the property subject to any utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?
30. Is the property the subject of any lawsuits, foreclosures, bankruptcy, leases or rental agreements, judgments, tax liens, proposed assessments, mechanics' liens, materialmen's liens, or notices from any governmental agency that could affect title to the property?
31. Is the property subject to a flood hazard or is the property located in a federally-designated flood plain?
32. Does the property abut or adjoin any private road(s) or street(s)?
33. If there is a private road or street adjoining the property, is there in existence any owners' association or maintenance agreements dealing with the maintenance of the road or street?

PROPOSED RULES

If you answered "yes" to any of the questions listed above (1 – 33), please explain (attach additional sheets if necessary):

In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public agency, or by an attorney, engineer, land surveyor, geologist, pest control operator, contractor, home inspector, or other expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.

The following questions pertain to the property identified above, including the lot to be conveyed and any dwelling unit(s), sheds, detached garages, or other buildings located thereon.

	<u>Yes</u>	<u>No</u>	<u>No Repre- sentation</u>
34. <u>To your knowledge, is the property subject to regulation by one or more owners' association(s) and governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot, including, but not limited to obligations to pay regular assessments or dues and special assessments? If your answer is "yes", please provide the information requested below as to each owners' association to which the property is subject [insert N/A into any blank that does not apply]:</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address, and telephone number of the president of the owners' association or the association manager are _____

(specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address, and telephone number of the president of the owners' association or the association manager are _____

*** If you answered "Yes" to question 34 above, you must complete the remainder of this Disclosure Statement. If you answered "No" or "No Representation" to question 34 above, you do not need to answer the remaining questions on this Disclosure Statement. Skip to the bottom of the last page and initial and date the page.**

	<u>Yes</u>	<u>No</u>	<u>No Repre- sentation</u>
35. <u>As of the date this Disclosure Statement is signed, are there any dues, fees, or special assessments which have been duly approved as required by the applicable declaration or bylaws, and that are payable to an association to which the lot is subject? If your answer is "yes", please state the nature and amount of the dues, fees, or special assessments to which the property is subject:</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

36. <u>As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against, or pending lawsuits involving the property or lot to be conveyed? If your answer is "yes", please state the nature of each pending lawsuit, and the amount of each unsatisfied judgment:</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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PROPOSED RULES

37. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against, or pending lawsuits involving the planned community or the association to which the property and lot are subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the property and lot to be conveyed? If your answer is "yes", please state the nature of each pending lawsuit, and the amount of each unsatisfied judgment:

38. Which of the following services and amenities are paid for by the owners' association(s) identified above out of the association's regular assessments ("dues")? (Check all that apply).

	<u>Yes</u>	<u>No</u>	<u>No Repre- sentation</u>
<u>Management Fees</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Exterior Building Maintenance of Property to be Conveyed</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Exterior Yard/Landscaping Maintenance of Lot to be Conveyed</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Common Areas Maintenance</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Trash Removal</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Recreational Amenity Maintenance</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Pest Treatment/Extermination</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Street Lights</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Water</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Sewer</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Storm water Management/Drainage/Ponds</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Internet Service</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Cable</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Private Road Maintenance</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Parking Area Maintenance</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Gate and/or Security</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Internet Service</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Other:</u> _____			(specify)

Owner Initials and Date _____
Purchaser Initials and Date _____

Owner Initials and Date _____
Purchaser Initials and Date _____

(b) The form described in Paragraph (a) of this Rule may be reproduced, but the form shall not be altered or amended in any way.

Authority G.S. 47E-4(b), (b1); 93A-3(c); 93A-6.

APPROVED RULES

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on November 17, 2011.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

AGRICULTURE, BOARD OF

Loose Egg Displays 02 NCAC 43H .0102* n/a G.S. 150B-21.5(a)(5)

ALCOHOLIC BEVERAGE CONTROL COMMISSION

Shelf Management 04 NCAC 02R .1711* 26 :02 NCR

BANKS, OFFICE OF THE COMMISSIONER OF

Subsidiary Investment Approval 04 NCAC 03C .0807* n/a G.S. 150B-21.5(a)(5)
Loan Documentation 04 NCAC 03C .1001* n/a G.S. 150B-21.5(a)(5)
Savings Institution Division 04 NCAC 16A .0101* n/a G.S. 150B-21.5(a)(2) & (4)
Restrictions: Payment of Dividends and Repurchase of 04 NCAC 16A .0105* n/a G.S. 150B-21.5(a)(2)
Petition for Adoption, Amendment or Repeal of Rules 04 NCAC 16A .0201* n/a G.S. 150B-21.5(a)(2)
Notice of Rule-Making Hearings 04 NCAC 16A .0202* n/a G.S. 150B-21.5(a)(2)
Petition for Declaratory Ruling 04 NCAC 16A .0301* n/a G.S. 150B-21.5(a)(2)
Response of Commissioner of Banks to Petition 04 NCAC 16A .0302* n/a G.S. 150B-21.5(a)(2) & (4)
Right to Hearing 04 NCAC 16A .0401* n/a G.S. 150B-21.5(a)(2)
Informal Settlement 04 NCAC 16A .0402* n/a G.S. 150B-21.5(a)(2)
Request for Hearing 04 NCAC 16A .0403* n/a G.S. 150B-21.5(a)(2)
Intervention in an Administrative Hearing 04 NCAC 16A .0405* n/a G.S. 150B-21.5(a)(2)
Subpoenas 04 NCAC 16A .0407* n/a G.S. 150B-21.5(a)(2)
Objection to Subpoena 04 NCAC 16A .0409* n/a G.S. 150B-21.5(a)(2)
Charter Application Restrictions 04 NCAC 16C .0102* n/a G.S. 150B-21.5(a)(2)
Corporate Name 04 NCAC 16C .0103* n/a G.S. 150B-21.5(a)(2)
Branch Office Application Restrictions 04 NCAC 16C .0202* n/a G.S. 150B-21.5(a)(2)
Forfeiture of Branch Office Final Approval 04 NCAC 16C .0203* n/a G.S. 150B-21.5(a)(2)
Temporary Closing of Office 04 NCAC 16C .0304* n/a G.S. 150B-21.5(a)(2)
Purchase of Branch 04 NCAC 16C .0305* n/a G.S. 150B-21.5(a)(2)
Bylaws 04 NCAC 16D .0103* n/a G.S. 150B-21.5(a)(2)
General Policies 04 NCAC 16D .0301* n/a G.S. 150B-21.5(a)(2)
Loans to One Borrower 04 NCAC 16D .0407* n/a G.S. 150B-21.5(a)(2)
Securities 04 NCAC 16D .0901* n/a G.S. 150B-21.5(a)(2)
Stock in Other Depository Institutions 04 NCAC 16D .0902* n/a G.S. 150B-21.5(a)(2)
Bylaws 04 NCAC 16E .0104* n/a G.S. 150B-21.5(a)(2)
General Policies 04 NCAC 16E .0301* n/a G.S. 150B-21.5(a)(2)
Loans to One Borrower 04 NCAC 16E .0405* n/a G.S. 150B-21.5(a)(2)
Stock in Other Depository Institutions 04 NCAC 16E .0702* n/a G.S. 150B-21.5(a)(2)
Amendments to Articles of Incorporation or Bylaws 04 NCAC 16F .0105* n/a G.S. 150B-21.5(a)(2)
Finance Subsidiary Transactions with Parent 04 NCAC 16F .0108* n/a G.S. 150B-21.5(a)(2)

APPROVED RULES

<u>Issuance of Securities by Finance Subsidiaries</u>	04	NCAC	16F	.0109*	n/a G.S. 150B-21.5(a)(2)
<u>Holding Company Subsidiaries and Financial Subsidiaries</u>	04	NCAC	16F	.0111*	n/a G.S. 150B-21.5(a)(2)
<u>Notification to the Commissioner of Banks</u>	04	NCAC	16F	.0112*	n/a G.S. 150B-21.5(a)(2)
<u>Examination of Financial Subsidiaries</u>	04	NCAC	16F	.0113*	n/a G.S. 150B-21.5(a)(2)

SOCIAL SERVICES COMMISSION

<u>Definitions</u>	10A	NCAC	10	.0102*	26:01 NCR
<u>Sanctions and Appeals for Fraudulent Misrepresentation</u>	10A	NCAC	10	.0308*	26:01 NCR
<u>Correction of Overpayments and Underpayments</u>	10A	NCAC	10	.0309*	26:01 NCR
<u>Requirements for the Administration of the Subsidized Chi...</u>	10A	NCAC	10	.0310*	26:01 NCR
<u>Provider Appeal to Local Purchasing Agency</u>	10A	NCAC	10	.0311*	26:01 NCR
<u>Appeal to Division of Child Development and Early Educati...</u>	10A	NCAC	10	.0312*	26:01 NCR
<u>Records</u>	10A	NCAC	10	.0506*	26:01 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>French Broad River Basin</u>	15A	NCAC	02B	.0304*	25:19 NCR
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DIETETICS/NUTRITION, BOARD OF

<u>Definitions</u>	21	NCAC	17	.0101*	26:01 NCR
<u>Qualifications for Licensure</u>	21	NCAC	17	.0103*	26:01 NCR
<u>Applications</u>	21	NCAC	17	.0104*	26:01 NCR
<u>Provisional License</u>	21	NCAC	17	.0107*	26:01 NCR
<u>Issuance and Renewal of License</u>	21	NCAC	17	.0109*	26:01 NCR
<u>Definitions</u>	21	NCAC	17	.0201*	26:01 NCR
<u>Review and Board Action</u>	21	NCAC	17	.0203*	26:01 NCR
<u>Supervision</u>	21	NCAC	17	.0303*	26:01 NCR

INTERPRETER AND TRANSLITERATOR LICENSING BOARD

<u>Persons Who Are Ineligible to Apply for a License</u>	21	NCAC	25	.0209*	25:17 NCR
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PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS FOR

<u>Visitors</u>	21	NCAC	50	.0303	26:03 NCR
<u>Review of Examination</u>	21	NCAC	50	.0308	26:03 NCR
<u>Permits</u>	21	NCAC	50	.0402*	26:03 NCR
<u>Use of License</u>	21	NCAC	50	.0403	26:03 NCR
<u>Active Employment</u>	21	NCAC	50	.0404*	26:03 NCR
<u>Multiple Licenses</u>	21	NCAC	50	.0405	26:03 NCR
<u>Responsibility of Licensed Person Employed by Firm</u>	21	NCAC	50	.0406*	26:03 NCR
<u>Corporations, Partnerships and Trade Names</u>	21	NCAC	50	.0407*	26:03 NCR
<u>Guidelines on Disciplinary Actions</u>	21	NCAC	50	.0412*	26:03 NCR
<u>Employees Exempted From Licensure</u>	21	NCAC	50	.0512*	26:03 NCR
<u>Plumbing, Heating and Fuel Piping Technician License</u>	21	NCAC	50	.0517	26:03 NCR
<u>Request for Hearing</u>	21	NCAC	50	.1002*	26:03 NCR

APPROVED RULES

<u>Notice of Hearing</u>	21	NCAC	50	.1004*	26:03 NCR
<u>Who Shall Hear Contested Cases</u>	21	NCAC	50	.1005*	26:03 NCR
<u>Annual Reports</u>	21	NCAC	50	.1105*	26:03 NCR

PSYCHOLOGY BOARD

<u>Fees</u>	21	NCAC	54	.1605*	26:03 NCR
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REAL ESTATE COMMISSION

<u>Handling and Accounting of Funds</u>	21	NCAC	58A	.0107*	26:03 NCR
<u>Residential Property and Owners' Association Disclosure S...</u>	21	NCAC	58A	.0114*	26:03 NCR
<u>Examination Subject Matter, Format, and Passing Scores</u>	21	NCAC	58A	.0402*	26:03 NCR
<u>Re-Applying for Examination</u>	21	NCAC	58A	.0403	26:03 NCR
<u>Confidentiality of Examinations</u>	21	NCAC	58A	.0405	26:03 NCR
<u>Examination Review</u>	21	NCAC	58A	.0406	26:03 NCR
<u>Active and Inactive License Status</u>	21	NCAC	58A	.0504	26:03 NCR
<u>Reinstatement of Expired License, Revoked, Surrendered or...</u>	21	NCAC	58A	.0505	26:03 NCR
<u>Licensing of Persons Licensed in Another Jurisdiction</u>	21	NCAC	58A	.0511*	26:03 NCR
<u>Procedures for Requesting Hearings When Applicant's Chara...</u>	21	NCAC	58A	.0616	26:03 NCR
<u>Postlicensing Education Requirement</u>	21	NCAC	58A	.1902	26:03 NCR
<u>Extensions of Time to Complete Postlicensing Education</u>	21	NCAC	58A	.1903*	26:03 NCR
<u>Facilities and Equipment</u>	21	NCAC	58C	.0207*	26:03 NCR
<u>Application and Criteria for Original Approval</u>	21	NCAC	58C	.0603*	26:03 NCR
<u>Renewal of Approval</u>	21	NCAC	58E	.0204*	26:03 NCR
<u>Classroom Facilities</u>	21	NCAC	58E	.0507*	26:03 NCR

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3)

PLANT CONSERVATION BOARD

<u>Collection and Sale of Ginseng</u>	02	NCAC	48F	.0305*	n/a S.L. 2011-394, Section 18(d)
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PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS FOR

<u>License Fees</u>	21	NCAC	50	.1102	26:03 NCR
<u>Exemptions and Credits</u>	21	NCAC	50	.1402	26:03 NCR
<u>Computation of Continuing Education Hours</u>	21	NCAC	50	.1403	26:03 NCR
<u>Course Requirements and Limitations</u>	21	NCAC	50	.1404	26:03 NCR
<u>Approval of Courses</u>	21	NCAC	50	.1405	26:03 NCR
<u>Certification of Course Completion by Licensees and Provi...</u>	21	NCAC	50	.1407	26:03 NCR
<u>Advertisements by Course Providers or Instructors</u>	21	NCAC	50	.1408	26:03 NCR
<u>Termination of Course or Provider Approval</u>	21	NCAC	50	.1409	26:03 NCR
<u>Petitions for Reinstatement of License</u>	21	NCAC	50	.1410	26:03 NCR

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

02 NCAC 43H .0102 LOOSE EGG DISPLAYS

- (a) Loose egg displays shall be deemed to meet the requirements of G.S. 106-245.18 when the display is labeled with the correct grade and size.
(b) The block letters of the label shall be at least three-eighths of an inch in height.
(c) The grade and size shall be written or printed on, or otherwise attached to or clearly associated with the container or display of such eggs, and such designation shall be visible to the public when the eggs or containers of such eggs are visible to the public.
(d) Retailers may display eggs in bulk without the grade and size designated thereon when such eggs are purchased directly from persons eligible to sell ungraded eggs, and if the display is conspicuously labeled with the words, "Ungraded Eggs". This label shall be bold legible letters at least three-eighths inch high.

History Note: Authority G.S. 106-245.15; 106-245.18; 106-245.21; Eff. August 1, 1982; Amended Eff. December 1, 2011.

02 NCAC 48F .0305 COLLECTION AND SALE OF GINSENG

(a) Definitions:

- (1) Department. The North Carolina Department of Agriculture and Consumer Services;
(2) Ginseng. Any plant of the species Panax quinquefolius including cuttings, roots, fruits, seeds, propagules or any other plant part;
(3) Ginseng Dealer. Any person who purchases or otherwise obtains ginseng roots which have been collected or cultivated in North Carolina in any quantity for commercial use. This definition does not include those persons who directly collect or cultivate ginseng roots, or who obtain ginseng roots for their own personal use;
(4) Export Certificate. A document issued to allow the export or shipment of ginseng out of the state by certifying that the ginseng covered by the document was legally collected or grown in North Carolina;
(5) Five Year Old Wild Ginseng Plant. Any wild ginseng plant having at least three prongs (five-leaflet leaves) or, in the absence of leaves, having at least four discernible bud scars plus a bud on the neck (rhizome);
(6) Inspector. An employee of the Department or any other person authorized by the Commissioner to enforce the Plant Protection and Conservation Act and the rules adopted thereunder;

- (7) Person. Individual, corporation, partnership, firm, or association;
(8) Record of Ginseng Purchases. A document completed by a ginseng dealer on a form provided by the Department to record ginseng purchases;
(9) Record of Harvest Season Collection. A document completed and signed by a collector of wild ginseng and by an Inspector, certifying that the ginseng covered by the document was legally collected during the harvest season; and
(10) Statement Indicating Legal Collection of Ginseng from One's Own Land. A document completed and signed by a person verifying that the wild collected ginseng being sold was collected from that person's own land.

(b) Purpose. The purpose of this Rule is to regulate trade in ginseng in North Carolina, to obtain federal approval for the export of ginseng from the state, to support the ginseng trade within the state, and to protect the species from over-collection and extinction.

(c) Collection of Ginseng:

- (1) Harvest Season for the Collection of Ginseng. The ginseng harvest season shall be from September 1 through December 31;
(2) Size of Collected Plants. Collection of any wild ginseng plant not meeting the definition of a five year old wild ginseng plant is prohibited except for the purpose of replanting;
(3) Replanting of Ginseng. All persons collecting ginseng from the wild shall plant the seeds of collected plants within 100 feet of where the plants are located. Ginseng seeds may be collected from the wild for replanting to a different location only if the plant bearing the seeds is not also collected in the same harvest season;
(4) Any person collecting wild ginseng on the lands of another for any purpose shall, at time of collection, have on his or her person written permission from the landowner, as required under G.S. 106-202.19(a)(1); and
(5) Possession of freshly dug ginseng on the lands of another shall constitute prima facie evidence that the ginseng was taken from the same land on which the collector was found.

(d) Purchase, Collection and Sale of Ginseng:

- (1) Ginseng Dealer Permits. All ginseng dealers shall obtain a permit from the Plant Industry Division of the Department prior to purchasing ginseng. Permits shall be valid from July 1 or the date of issue, whichever is later, to the following June 30. No ginseng shall be purchased by a ginseng dealer without a current permit;
(2) Fees. A ginseng dealer shall pay the following fee for a permit:

- (A) Resident unlimited quantity - \$100.00
- (B) Resident limited (up to 100 pounds per license period) - \$50.00
- (C) Non-resident - \$500.00;
- (3) Buying Season for Ginseng. The buying season for wild or wild-simulated green ginseng is September 1 through March 31. The buying season for wild or wild-simulated dry ginseng is September 15 through March 31. To buy wild collected ginseng outside of this buying season a ginseng dealer must obtain from the collector either:
 - (A) a completed Statement Indicating Legal Collection of Ginseng from One's Own Land; or
 - (B) a Record of Harvest Season Collection completed by the collector and signed by an Inspector;
- (4) Purchase Records. Every ginseng dealer shall keep a record of each purchase of ginseng collected or grown in North Carolina on the applicable Record of Ginseng Purchases provided by the Department. Forms from previous years, copies, or any forms other than those provided by the Department for the current permit period shall not be used. Records of Ginseng Purchases shall be made available for inspection by an Inspector and applicable records shall be surrendered to an Inspector upon issuance of an Export Certificate or upon request. The applicable Statement Indicating Legal Collection of Ginseng from One's Own Land or Record of Harvest Season Collection shall be attached to any Record of Ginseng Purchases recording a purchase of wild collected ginseng collected outside of the harvest season or bought outside of the buying season;
- (5) Purchase of Ginseng from Other Ginseng Dealers.
 - (A) All ginseng dealers who purchase ginseng from other ginseng dealers located in North Carolina shall purchase only from those ginseng dealers that have valid dealer permits. Such purchases shall be recorded in a Record of Dealer-Dealer Transactions. Ginseng purchased from ginseng dealers who lack valid permits shall not be certified for export or shipment out of the state.
 - (B) Each dealer shall submit copies of purchase records monthly between September 1 and March 31. Annual dealer reports shall be provided to the Department at the end of the purchase season. The report must be submitted no later than April 30.
- (C) A copy of end of season weight receipt shall be provided to the Department for any ginseng roots possessed by a dealer at the end of the buying season. The receipt must be retained by the dealer and presented at the time of any future certification of the ginseng for export;
- (6) Exportation and Shipment of Ginseng. All persons who have ginseng in any quantity and wish to export or ship any amount out of the state shall obtain an export certificate from an Inspector. There shall be no charge for an export certification. To obtain an export certificate a person must have accurate records of his purchases, present and surrender the original Record of Ginseng Purchases upon issuance of an export certificate and possess a valid ginseng dealer's permit; and
- (7) Importation of Ginseng. All ginseng imported into North Carolina from other states must obtain the appropriate certificates from the state of origin, which must be presented to a Department representative at the time of inspection.
- (e) Cultivation and Sale of Cultivated Ginseng.
 - (1) Buying season for Cultivated Ginseng. Cultivated Ginseng may be sold at any time during the year provided that the grower's ginseng has been certified as Cultivated Ginseng; and
 - (2) Certifying Cultivated Ginseng. Cultivated Ginseng certified by a Department representative may be dug or sold any time during the year and does not require a state export certificate, as long as a copy of the certification records accompany the ginseng.

History Note: Authority G.S. 106-202.15; 106-202.21; Eff. June 30, 1981; Amended Eff. December 1, 2010; April 1, 2003; July 1, 1998; August 1, 1990; May 1, 1984; Amended Eff. Pending Legislative Review.

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 02R .1711 SHELF MANAGEMENT

- (a) Each local board shall establish and maintain a shelf management plan. The local board shall establish policies within its plan that incorporates the following concepts:
 - (1) set the higher priced items on the upper shelves at eye level and set the lower priced items on the bottom shelves;
 - (2) block categories in vertical sets per their category;
 - (3) arrange bottle sizes so they increase left to right of the same item;

- (4) create brand billboard by stacking all brand sizes together;
- (5) set shelf space for products considering the following factors:
 - (A) market share;
 - (B) promotions;
 - (C) traffic patterns
 - (D) seasonal sales; and
 - (E) cross merchandising;
- (6) set and maintain all bottles at the front of the shelf; and
- (7) discontinue low profit slow moving items.

(b) Each local board shall keep a copy of its shelf management plan at each store location and, upon request, provide a copy to a Commission representative.

History Note: Authority G.S. 18B-100; 18B-203(a)(20); Eff. December 1, 2011.

04 NCAC 03C .0807 SUBSIDIARY INVESTMENT APPROVAL

Banks that desire to create or invest in a corporation, partnership, firm, joint venture or other entity which will engage in a nonbanking function and which shall be either partially or wholly owned by the bank must first obtain the approval of the Commissioner of Banks, who shall take into account all relevant facts and circumstances, including, without limitation, the effect of approval upon the safety and soundness of the institution. The application for approval shall be by letter which must include the following:

- (1) A copy of the articles of incorporation, articles of partnership or other instrument creating or governing the business entity;
- (2) A description of the proposed activities and by whom these activities will be conducted;
- (3) The proposed investment in the enterprise expressed both in dollar amount and as a percentage of the bank's unimpaired capital funds;
- (4) The amount of the bank's investment in all existing subsidiaries, partnerships and companies as of the date of the letter of application;
- (5) The amount of the bank's unimpaired capital fund on the date of the letter of application as the same is defined at G.S. 53-1(9);
- (6) A copy of any contract or agreement for a lease, rental or other commitment by the enterprise that would create a contingent liability upon the business (or enterprise) or the bank;
- (7) Copies of any licenses or other permits which the enterprise or its employees are required to obtain prior to engaging in a regulated activity. If such licenses are not available on the date of the letter of application the same must be submitted prior to final approval; and

- (8) The application fee as determined by 04 NCAC 03C .1601(a)(7).

History Note: Authority G.S. 53-47; 53-93; 53-95; 53-104; Eff. May 1, 1992; Amended Eff. December 1, 2011; June 1, 1995.

04 NCAC 03C .1001 LOAN DOCUMENTATION

Unless otherwise provided, each bank, or any branch thereof, where notes are held must maintain on file the appropriate supporting documents as follows:

- (1) Financial Statements. Financial statements shall be required from any borrower who is a maker, co-maker, guarantor, endorser or surety on any unsecured loans or other unsecured extensions of credit in an amount of fifty thousand dollars (\$50,000) or more in the aggregate. Financial statements required by this Item shall:
 - (a) be signed or otherwise properly executed;
 - (b) be dated within 18 months preceding the origination date of the credit obligation;
 - (c) be renewed within 18 months after the date of the last financial statement on file;
 - (d) be addressed to, or made specifically for, the lending bank; and
 - (e) include such information as will adequately reflect the assets, liabilities, net worth and income of the borrower.
- (2) Financial Statement Exceptions. A bank may waive the financial statement required by Item (1) of this Rule for credit granted under a credit card. Additionally, a bank may elect to substitute in the place of a current financial statement a current credit bureau report for consumer loans scheduled to be repaid in at least quarterly installments.
- (3) Personal Property Appraisals. Appraisals on personal property used as collateral for a loan shall be obtained and shall be completed as follows:
 - (a) Generally. Except as otherwise provided below, a written appraisal of personal property used to collateralize any loan must be made by the executive committee or loan committee of the bank, or any branch thereof, or other reliable persons familiar with the value of the property. Except as provided, all appraisals must be renewed every 24 months.
 - (b) Requirements. The appraisal required by this Item must include:
 - (i) the name of the borrower;

- (ii) the date the appraisal was made;
 - (iii) the value of the collateral;
 - (iv) the signatures of at least two persons making the appraisal;
 - (v) a brief description of the property;
 - (vi) the amount of any prior lien and holder of the lien, if any; and
 - (vii) the original amount or outstanding balance of the loan which the property is used to secure.
- (c) Appraisal Exceptions. No appraisal shall be required under the following circumstances:
- (i) on collateral to notes of less than fifty thousand dollars (\$50,000);
 - (ii) on loans fully secured by obligations of the United States or the State of North Carolina;
 - (iii) on loans fully secured by deposits in the bank maintaining the loan account;
 - (iv) on loans fully secured by the cash surrender or loan value of life insurance policies;
 - (v) on loans fully secured by bonded warehouse receipts;
 - (vi) on floor plan loans to dealers fully secured by new automobiles, stationwagons, vans, and trucks;
 - (vii) on discounted notes for a dealer where the note is given as the purchase price of an automobile or other consumer goods; or
 - (viii) on loans fully secured by listed securities, unless such loans are within the provisions of the Securities Exchange Act of 1934 as defined by Regulation "U," as amended from time to time by the Board of Governors of the Federal Reserve System. On loans secured by such collateral, appraisal must be made and kept on file until the loan is fully paid.
- (d) Renewal Exceptions. Appraisals need not be renewed annually where
- an automobile, stationwagon, mobile home, or a truck or van not exceeding 8,000 pounds empty weight, is the sole or partial collateral for a loan.
- (e) Single Signature Exception. An appraisal may be signed by only one person where an automobile, stationwagon, mobile home, or a truck or van not exceeding 8,000 pounds empty weight, is the sole collateral for a loan.
- (4) Real Estate Appraisals. Unless otherwise provided, all real estate taken as security for loans shall be appraised in the form and manner set forth in Sub-item (4)(a) through (4)(c) of this Rule. In addition, the appraisal must be independent in that the appraiser is not involved in the loan transaction secured by the property being appraised and has no interest, financial or otherwise, in the property;
- (a) The bank may elect to waive the requirement for an appraisal of real estate given as security for loans of fifty thousand dollars (\$50,000) or less. Appraisals of real estate given as security for loans over fifty thousand dollars (\$50,000), but not exceeding two hundred fifty thousand dollars (\$250,000), whether directly or indirectly pledged shall be prepared by any one of the following methods:
- (i) Two members of the executive or loan committee who are familiar with real estate values in the community where the property is located;
 - (ii) Two bank employees who are familiar with real estate values in the community where the property is located, provided that one of the two employees must not be involved in the loan transaction secured by the property being appraised;
 - (iii) A state-licensed real estate appraiser or state-certified real estate appraiser or a person certified as a real estate appraiser by an appraisal trade organization approved by the bank to perform the appraisal; or
 - (iv) In lieu of an appraisal as provided by Sub-items (4)(a)(i) through (iii) of this Rule, for loans less than two

hundred fifty thousand dollars (\$250,000), a bank may elect to accept a copy of the most recent real property tax notice from the tax administrator's office in the county in which the property is located provided that such notice states the assessed ad valorem tax value of the real estate, and any improvements thereon, separate from the personal property; and provided further, the loan officer shall include with the tax notice a memorandum to file that he or she has obtained the notice from the county tax administrator and is of the opinion that such notice accurately reflects the real property values.

- (b) Except as noted, appraisals required by Sub-item (4)(a)(i), (ii), and (iii) of this Rule shall be in writing, and signed and dated by the person or persons making the appraisal. Additionally, the appraisal must identify the loan transaction for which it was made; identify the current balance of prior lien and holder of the lien, if any, disclosed by the attorney's title certificate; segregate values of improvements from values of the land; and describe the property so as to make it easily identifiable. If a professional appraisal form is used which does not include this information, the bank must complete and attach to such appraisal its own appraisal form disclosing the required information. The appraisal must state the basis or approach used to determine the value of the property. Acceptable approaches to determining the value of real property are:
- (i) The current cost of replacing a property, less depreciation relating to deterioration from functional or economic obsolescence;
 - (ii) The value indicated by recent sales of comparable properties in the market and other market factors such as listings and offers to sell; or

(iii) The value that the property's net earning power will support, based on a capitalization of net income.

- (c) All real estate given as security to loans in an amount over two hundred fifty thousand dollars (\$250,000), whether directly or indirectly pledged shall be appraised and such appraisal shall be subject to the provisions of 12 C.F.R. 323.1 through 12 C.F.R. 323.7, which are herein incorporated by reference. Pursuant to G.S. 150B-21.6, any reference to 12 C.F.R. 323.1 through 12 C.F.R. 323.7 shall automatically include any later amendments or additions to those rules.
- (5) Certificate of Title. For loans secured primarily by real property and only secondarily by the borrower's general credit worthiness and projected income, a certificate of title furnished by an attorney at law, or title insurance issued by a company licensed by the Commissioner of Insurance, or other insurance coverage that provides to the bank substantially similar protection against loss from title defects or errors/omissions at closing or other loan-related risks, must accompany each deed of trust or mortgage given as security on loans of fifty thousand dollars (\$50,000) or more.
- (6) Stock Certificate/Powers. Where stock certificates, or similar securities, are accepted as collateral to loans, each certificate must be endorsed and witnessed in ink, or accompanied by a stock power signed and witnessed in ink. Where such collateral is in the name of another, other than the maker or endorser of the note, there must be on file in the bank written authority from the owner permitting the hypothecation of the collateral.
- (7) Corporate Resolutions. Loans made directly to corporations must be supported by certified copies of resolutions of the board of directors of the corporation, authorizing the making of such loans.
- (8) Partnership Declaration. Loans made directly to partnerships must be supported by a declaration by the partners showing the composition of the partnership and unless all partners sign the note, the authority of the partner(s) executing the note to bind the partnership.
- (9) Limited Liability Company Certification. Loans made directly to limited liability companies must be supported by a certification of a manager thereof that the loan is authorized and is obtained for the carrying on in the usual

way the business of the limited liability company.

- (10) Unlisted Securities. Full credit information on all unlisted securities, now owned or hereafter purchased or acquired, must be secured and kept on file in the bank.

History Note: Authority G.S. 53-93; 53-95; 53-104; 53-110; 53-115; 12 U.S.C. § 3331, et seq.; Eff. February 1, 1976; Amended Eff. December 1, 2011; April 1, 2007; June 1, 1995; May 1, 1992; September 1, 1990; September 1, 1983.

04 NCAC 16A .0101 SAVINGS INSTITUTIONS DIVISION

- (a) The Savings Institutions Division is under the supervision of the Commissioner of Banks.
(b) The Division is located at 316 W. Edenton Street, in Raleigh, North Carolina.
(c) The mailing address of the Division is 4309 Mail Service Center, Raleigh, North Carolina, 27699-4309.

History Note: Authority G.S. 54B-4; 54B-55; 54C-4; 54C-53; Eff. August 31, 1981; Amended Eff. December 1, 2011; December 6, 1991; January 1, 1990.

04 NCAC 16A .0105 RESTRICTIONS: PAYMENT OF DIVIDENDS AND REPURCHASE OF STOCK

- (a) A stock savings institution shall not declare or pay a cash dividend on, or repurchase any of, its capital stock if the effect thereof would be to reduce the net worth of the savings institution to an amount which is less than the minimum required by the federal regulatory authority or, for savings banks, an amount less than the minimum required by G.S. 54C-163.
(b) Without the prior written approval of the Commissioner of Banks, a stock savings institution which has been in operation or converted from mutual form for less than five years shall not repurchase any of its capital stock. Such approval shall be granted only upon a showing that the proposed repurchase will not adversely affect the safety and soundness of the savings institution.
(c) A stock savings institution which has been in operation or converted from mutual form for less than five years shall obtain the written approval of the Commissioner of Banks before declaring or paying a cash dividend on its capital stock in an amount in excess of one-half of the greater of:
(1) the savings institution's net income for the most recent fiscal year end; or
(2) the average of the savings institution's net income after dividends for the most recent fiscal year end and not more than two of the immediately preceding fiscal year ends, if applicable.
(d) For a period of three years following the date of completion of a conversion from mutual to stock form, no person shall,

directly or indirectly, offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of a converted savings institution without the prior written approval of the Commissioner of Banks. Such approval shall be granted only as follows:

- (1) During the first year following the date of completion of the conversion to protect the safety and soundness of the institution; or
(2) During the second and third years following the date of completion of the conversion upon a finding by the Commissioner of Banks that:
(A) such acquisition:
(i) is necessary to protect the safety and soundness of the institution, or
(ii) is supported by the board of directors of the converted savings institution, and
(B) the person acquiring in excess of 10 percent of any class of an equity security of the converted institution is of good character and integrity, possesses satisfactory managerial skills, and after the acquisition such person will be a source of financial strength to the converted savings institution and the interests of the public will not be adversely affected thereby.
(e) Securities beneficially owed in violation of Paragraph (d) of this Rule in excess of 10 percent of any class of securities shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote.
(f) Paragraphs (d) and (e) shall not apply to:
(1) any offer with a view toward public resale made exclusively to the savings institution or its underwriters or the selling group acting on its behalf; or
(2) any offer to acquire or acquisition of beneficial ownership of more than 10 percent of the common stock of a savings institution by a corporation whose ownership is or will be substantially the same as the ownership of the savings institution, provided that the offer or acquisition is made more than one year following the date of completion of the conversion.

History Note: Authority G.S. 54B-43; 54B-55; 54C-44; 54C-53; Eff. August 31, 1981; Amended Eff. July 1, 1990; November 1, 1985; Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992; Amended Eff. December 1, 2011; April 15, 1993; February 15, 1992.

**04 NCAC 16A .0201 PETITION FOR ADOPTION:
AMENDMENT OR REPEAL OF RULES**

(a) Right to Petition. Any interested person may petition the Commissioner of Banks to promulgate, amend, or repeal an administrative rule.

(b) Form of Petition. The petition shall be in writing, signed by the petitioning party or parties and must include the address of the petitioning party. In addition, the petition shall contain the following information:

- (1) a draft of the proposed rule, amendment or repeal or a summary thereof;
- (2) the reason(s) for the proposal;
- (3) the effect on existing rules or orders or both;
- (4) any data showing the probable effect of the proposal on existing practices in the area involved, including cost; and
- (5) the names of those most likely to be affected by the proposal with addresses if reasonably known.

(c) Address for Petition. Petitions shall be addressed to the Division at its mailing address.

(d) Disposition of Petition. Upon receipt of a petition, the Commissioner of Banks shall make a study of the facts stated in the petition and any additional information he deems relevant. The Commissioner of Banks' disposition of the petition shall be made in one of the following forms within 30 days of receipt of the petition:

- (1) a written denial of the proposal setting forth the reasons for such denial, or
- (2) a written communication to the petitioner indicating the plan of the Commissioner of Banks to initiate rulemaking procedures pursuant to G.S. 150B-20.

*History Note: Authority G.S. 54B-55; 150B-20;
Eff. July 1, 1990;
Amended Eff. December 1, 2011.*

**04 NCAC 16A .0202 NOTICE OF RULE-MAKING
HEARINGS**

Any person or agency desiring to be placed on the mailing list for the rule-making notices of the Commissioner of Banks may file such request by furnishing a name and mailing address in writing to the Division at its mailing address. The request must state the subject areas within the authority of the Office of the Commissioner of Banks office for which the notice is requested. There shall be no charge to be placed on the mailing list.

*History Note: Authority G.S. 53-93; 150B-21.2(d);
Eff. July 1, 1990;
Amended Eff. December 1, 2011.*

**04 NCAC 16A .0301 PETITION FOR
DECLARATORY RULING**

(a) Petitioner Must Possess Interest. The petitioner must be a party or an aggrieved person, and the petition itself must set forth the petitioner's standing as a basis for the request.

(b) Form and Content of Petition. The petition shall be typewritten and shall contain the name and address of the

petitioner, the specific factual situation involved, the question or questions sought to be answered, and the identification of the rules, statutes, or orders applicable to the question presented.

(c) Written Brief May Be Submitted. The petitioner may submit a written brief, but oral argument shall not be allowed unless deemed necessary by the Commissioner of Banks.

(d) Mailing Address. All requests for declaratory rulings shall be mailed to the Division at its mailing address.

*History Note: Authority G.S. 53-93; 54B-2; 54B-52; 54B-55;
54C-2; 54C-52; 54C-53; 150B-2(5); 150B-4;
Eff. July 1, 1990;
Amended Eff. December 1, 2011.*

**04 NCAC 16A .0302 RESPONSE OF
COMMISSIONER OF BANKS TO PETITION**

(a) Written Response. A written response to the petition for a declaratory ruling, whether in the form of a declaratory ruling or a refusal to issue a declaratory ruling, shall be signed by the Commissioner of Banks or his designated representative.

(b) Refusal to Issue Declaratory Ruling. The Commissioner of Banks may refuse to issue a declaratory ruling if one of the following circumstances exists:

- (1) The subject matter is one in which the Commissioner of Banks has no authority to issue a binding decision;
- (2) The situation is one in which the amount of work that would be required by the Commissioner of Banks and staff to issue the declaratory ruling would be the same as or greater than the work required to process the request through a contested case proceeding;
- (3) The petition does not state with enough specificity the factual situation involved, or the question is presented in such a manner that the Commissioner of Banks cannot determine what the question is, or that the Commissioner of Banks cannot respond with a specific ruling that will be binding on all parties;
- (4) The petitioner does not show that the petitioner is a party or an aggrieved person or otherwise has standing to bring the petition; or
- (5) For any other reason the Commissioner of Banks finds the issuance of a declaratory ruling to be undesirable.

*History Note: Authority G.S. 54-B-2; 54B-52; 54B-55; 54C-3; 54C-52; 54C-53; 150B-4;
Eff. August 1, 1990;
Amended Eff. December 1, 2011.*

04 NCAC 16A .0401 RIGHT TO HEARING

Whenever the Commissioner of Banks acts in such a way as to affect the rights, duties or privileges of a specific identified party, the party may appeal a final decision by the Commissioner of Banks in accordance with Article 3A of G.S. 150B.

*History Note: Authority G.S. 53-104; 150B-38;
Eff. July 1, 1990;*

Amended Eff. December 1, 2011.

04 NCAC 16A .0402 INFORMAL SETTLEMENT

(a) Attendance at Settlement Conference. Before acting upon a hearing request the Commissioner of Banks must first make an effort to resolve the matter informally.

(b) Settlement Statement. A proposed settlement, including a stipulated statement of facts, shall be set forth in writing by the Division. If the proposed settlement is agreed to by all parties to the matter, it shall represent the final disposition of the matter and shall be signed by all parties to the matter or their legal representatives. If the proposed settlement is not agreed to and signed by all parties, then the matter shall proceed as provided in this Section.

History Note: Authority G.S. 54B-55; 150B-38; Eff. August 1, 1990; Amended Eff. December 1, 2011.

04 NCAC 16A .0403 REQUEST FOR HEARING

(a) Form of Request. A request for an administrative hearing must be in writing and must contain the following information:

- (1) name and address of the person requesting the hearing,
- (2) a concise statement of the action by the Commissioner of Banks that is being challenged,
- (3) a concise statement of the manner in which the petitioner is aggrieved, and
- (4) a clear and specific demand for a public hearing.

(b) Address For Request. The request for hearing shall be filed with the Division at its mailing address.

History Note: Authority G.S. 54B-55; 150B-38; Eff. July 1, 1990; Amended Eff. December 1, 2011.

04 NCAC 16A .0405 INTERVENTION IN AN ADMINISTRATIVE HEARING

(a) Petition to Intervene. A petition to intervene may be permitted if timely and if the petition meets the criteria set forth in G.S. 1A-1, Rule 24(b).

(b) Intervention Criteria. In addition, the Commissioner of Banks, in his discretion, may allow intervention or limited intervention when:

- (1) Similar rights will be affected;
- (2) Intervention will not confuse issues;
- (3) Issues are the same or similar to the issue in question;
- (4) Intervention is in the public interest; and
- (5) Intervention will not prejudice the rights of parties.

(c) Form of Petition. A petition to intervene shall contain the name of the petitioner, the title of the hearing, the date and time of the hearing, if known, and the grounds for intervention. The petition for intervention shall be addressed to all parties affected thereby and to the Division at its mailing address.

(d) Notice of Intervention. If the Commissioner of Banks allows intervention, notice of that decision shall be issued within 30 days to all parties and to the petitioner. Notification shall include a statement of any limitation of time, subject matter, evidence, or other limitations imposed on the intervenor. If the Commissioner of Banks' decision is to deny intervention, the petitioner shall be notified within 30 days.

History Note: Authority G.S. 53-93; 150B-38; Eff. July 1, 1990; Amended Eff. December 1, 2011.

04 NCAC 16A .0407 SUBPOENAS

(a) Hearing Officer May Issue Subpoena. Any hearing officer may issue subpoenas in the name of the Commissioner of Banks.

(b) Request for Subpoena. Subpoenas requiring the attendance of witnesses, or the production of documents, evidence or things shall be issued by a hearing officer after receipt of a written request from a party to a contested case for such subpoena.

History Note: Authority G.S. 53-93; 150B-38; 150B-39; Eff. July 1, 1990; Amended Eff. December 1, 2011.

04 NCAC 16A .0409 OBJECTION TO A SUBPOENA

(a) Form of Objection. Except as may be otherwise stated in a particular subpoena, a party or person receiving a subpoena from the Division may object thereto by filing a written objection to the subpoena with the Division at its mailing address. An objection to a subpoena must include a concise but complete statement of reasons why the subpoena should be revoked or modified. These reasons shall include any reason in law for holding the subpoena invalid.

(b) Service of Objection. The objection shall be served upon the Commissioner of Banks and the party who requested the subpoena. Service shall be in accordance with the North Carolina Rules of Civil Procedure.

(c) Response to Objection. The party requesting the subpoena shall file a written response to the objection. The response shall be served in like manner as the objection.

(d) Hearing on Subpoena. After receipt of the objection and response thereto, the hearing officer shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and shall notify all other parties of a hearing, to be scheduled as soon as practicable, at which time evidence and testimony regarding the objection and response shall be presented.

History Note: Authority G.S. 53-93; 150B-38; 150B-39; Eff. July 1, 1990; Amended Eff. December 1, 2011.

04 NCAC 16C .0102 CHARTER APPLICATION RESTRICTIONS

(a) A charter application which has at least five of the same incorporators or directors as that of a pending application shall not be filed with the Commissioner of Banks until the pending application has been processed by the Commission.

(b) A charter application which has been denied by the Commission shall not be processed by the Commission upon refile unless:

- (1) a period of six months has elapsed since the denial; or
- (2) another charter application is filed with the Commissioner of Banks by different incorporators for any part of the same service area as determined by the Commissioner of Banks.

History Note: Authority G.S. 54B-2; 54B-52; 54B-55; 54C-2; 54C-52; 54C-53;
Eff. August 31, 1981;
Amended Eff. December 1, 2011.

04 NCAC 16C .0103 CORPORATE NAME

(a) A savings institution shall not have the same name as that of another savings institution or a name so similar to that of another savings institution as to mislead the public. Each name shall contain the words "savings and loan", "savings and loan association", or "savings bank". A savings institution shall not use a name which has not been approved by the Commissioner of Banks.

(b) In addition to the requirements of Paragraph (a) of this Rule, the name of each stock savings institution shall contain the wording "corporation," "incorporated," "limited," or "company"; an abbreviation of one of such words; or other words sufficient to distinguish stock savings institutions from mutual savings institutions.

(c) Each branch office of a savings institution shall have the same name as that of the savings institution; provided a savings institution may, upon written approval of the Commissioner of Banks, include as part of its name a designation or branch name which reflects the identity of the branch office. The term "branch office" as used in this Paragraph shall mean a legally established place of business of a savings institution other than the main office, including an office acquired through merger or any other legal means, where the business of the savings institution may be conducted.

History Note: Authority G.S. 54B-10; 54B-55; 54C-12; 54C-53;
Eff. August 31, 1981;
Temporary Amendment Eff. August 26, 1985 for a period of 93 days to expire on November 26, 1985;
Amended Eff. November 1, 1985;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. December 1, 2011; February 15, 1992.

04 NCAC 16C .0202 BRANCH OFFICE APPLICATION RESTRICTIONS

If a branch office application is denied, the savings institution shall wait at least six months before refile another branch office application for any part of the same service area as determined by the Commissioner of Banks.

History Note: Authority G.S. 54B-22; 54B-55; 54C-23; 54C-53;
Eff. August 31, 1981;
Amended Eff. November 1, 1982;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. December 1, 2011; February 15, 1992.

04 NCAC 16C .0203 FORFEITURE OF BRANCH OFFICE FINAL APPROVAL

Any savings institution not opening its branch office within 12 months after final approval shall forfeit such approval. Provided, the Commissioner of Banks upon written application from the savings institution, may grant the savings institution a six month extension within which to open the branch office. Such extension shall be granted only upon a showing that the delay was beyond the control of the applicant and that the economic factors which provided the basis of the original approval have not changed. Provided further, in no event may a savings institution delay opening a branch office for more than 18 months after final approval.

History Note: Authority G.S. 54B-55; 54C-53;
Eff. August 31, 1981;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. December 1, 2011; February 15, 1992.

04 NCAC 16C .0304 TEMPORARY CLOSING OF OFFICE

The Commissioner of Banks shall be notified if an office is closed temporarily for any reason other than observance of a holiday.

History Note: Authority G.S. 54B-55;
Eff. July 1, 1990;
Amended Eff. December 1, 2011.

04 NCAC 16C .0305 PURCHASE OF BRANCH

No savings institution shall purchase a branch office without first obtaining the written approval of the Commissioner of Banks. The savings institution shall furnish such information as to the purchase as the Commissioner of Banks may prescribe as set out in these Rules.

History Note: Authority G.S. 54B-22; 54B-55; 54C-24; 54C-53;
Eff. July 1, 1990;
Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Amended Eff. December 1, 2011; February 15, 1992.

04 NCAC 16D .0103 BYLAWS

(a) The Board of Directors of an association shall, pursuant to Chapter 55 of the General Statutes, enact bylaws for the regulation and governance of the affairs of the association.

(b) A certified copy of an association's bylaws and any subsequent amendments thereto shall be filed with the Commissioner of Banks for approval as set out in G.S. 54B-12

and G.S. 54B-14. Provided, bylaws in effect on the effective date of this Rule need not be submitted for approval by the Commissioner of Banks. Provided further, the Commissioner of Banks shall be deemed to have approved any bylaws or amendments to which he has not objected within 25 days after the date on which such bylaws or amendments are filed.

History Note: Authority G.S. 54B-2; 54B-9; 54B-52; 54B-55; 54C-2; 54C-9; 54C-52; 54C-53; Eff. August 31, 1981; Amended Eff. December 1, 2011.

04 NCAC 16D .0301 GENERAL POLICIES

- (a) Records to be Kept at Principal Office. Every association shall keep at the principal office correct and complete books of account and minutes of the proceedings of members, shareholders, directors and committees. Complete records of all business transacted at the principal office shall be maintained at the principal office. Everything relating to the business of an association shall be examined and investigated by the Commissioner of Banks on a regular and periodic basis determined by the size and complexity and current expected condition and recent performance of the institution, the availability of examiners, coordination of state and federal schedules, the convenience of the institution, and any other requirements or constraints. Every association and service corporation thereof shall be audited at least once in each calendar year by independent auditors. The audit shall be done on the basis of generally accepted accounting principles, unless otherwise provided by this Chapter. The association shall file with the Commissioner of Banks one copy of the audit report along with one copy of the auditor's management letter and any other letters regarding the audit within 90 days after the end of its fiscal year, unless extended in writing by the Commissioner of Banks. Such extension by the Commissioner of Banks shall be granted upon a showing by the association that the failure to file within 90 days of the close of its fiscal year was due to circumstances beyond its control or that compliance with the time period would have resulted in a substantial increase in audit costs. The association shall also submit to the Commissioner of Banks a copy of the association's written response to the auditor's management letter at the time such response is provided to the appropriate federal regulatory authority.
- (b) Records to be Prepared at Branch Office. Each branch office shall prepare records of all business transacted at such branch office, and shall furnish full control records to the principal office.
- (c) Accounting Practices. Every association shall observe generally accepted accounting principles and practices unless otherwise required by regulations of the appropriate federal regulatory authority.
- (d) Closing Date for Books. Every association shall close its books at the close of business on December 31 of each year, or shall obtain the approval of the Commissioner of Banks to designate any other closing date. When determining whether to designate a different closing date, the Commissioner shall consider what is in the best interest of depositors, borrowers, other customers, the institution's owners, employees, creditors, and the community in general.

(e) Bonds and Other Obligations to be Carried at Actual Costs. The bonds or other investments of an association shall not be carried on its books at more than the actual costs thereof.

(f) Real Estate to be Carried at Amount Invested in Same. An association shall not carry any real estate on its books at a sum in excess of the total amount invested by such association on account of such real estate, including advances, costs, and improvements, but excluding accrued, uncollected interest.

(g) Appraisal of Real Estate Owned. Every association shall appraise each parcel of real estate at the time of acquisition thereof. The report of each such appraisal shall be submitted in writing to the Board of Directors and shall be kept in the records of the association.

(h) Maintenance of Membership Records. Every mutual association shall maintain membership records that shall show the name and address of the member, the status of the member, status of the member as a withdrawable account holder, or an obligor, or a withdrawable account holder and obligor, and the date of the membership thereof.

(i) Maintenance of Stockholder Records. Every stock association shall keep at its principal office or at the office of its transfer agent or registrar, a record of its stockholders that contains the names and addresses of all stockholders, and the number, class and series of shares held by each. Whenever called upon by the Commissioner of Banks a stock association shall file in the office of the Commissioner of Banks a correct list of all its stockholders, the resident address of each, the number of shares of stock held by each, and the dates of issue. When an association has reason to believe 10 percent or more of the outstanding capital stock of the association is controlled by one owner, an association shall notify the Commissioner of Banks in writing, and shall include the resident address and number of shares held by the shareholder.

History Note: Authority G.S. 54B-2; 54B-9; 54B-21; 54B-52; 54B-55; 54C-2; 54C-52; 54C-53; Eff. August 31, 1981; Amended Eff. December 1, 2011; February 15, 1992; July 1, 1990; January 1, 1984; July 1, 1983.

04 NCAC 16E .0301 GENERAL POLICIES

- (a) Records to be Kept at Principal Office. Every savings bank shall keep at the principal office correct and complete books of account and minutes of the proceedings of members, shareholders, directors and committees. Complete records of all business transacted at the principal office shall be maintained at the principal office. Everything relating to the business of a savings bank shall be examined and investigated by the Commissioner of Banks on a regular and periodic basis determined by the size and complexity and current expected condition and recent performance of the institution, the availability of examiners, coordination of state and federal schedules, the convenience of the institution, and any other requirements or constraints. Every savings bank and service corporation thereof shall be audited at least once in each calendar year by independent auditors. The audit shall be done on the basis of generally accepted accounting principles, unless otherwise provided by this Chapter. The savings bank shall file with the Commissioner of Banks one copy of the audit report

along with one copy of the auditor's management letter and any other letters regarding the audit within 90 days after the end of its fiscal year, unless extended in writing by the Commissioner of Banks. Such extension by the Commissioner of Banks shall be granted upon a showing by the savings bank that the failure to file within 90 days of the close of its fiscal year was due to circumstances beyond its control or that compliance with the time period would have resulted in a substantial increase in audit costs. The savings bank shall also submit to the Commissioner of Banks a copy of the savings bank's written response to the auditor's management letter at the time such response is provided to the appropriate federal regulatory authority.

(b) **Records to be Prepared at Branch Office.** Each branch office shall prepare records of all business transacted at such branch office, and shall furnish full control records to the principal office.

(c) **Closing Date for Books.** Every savings bank shall close its books at the close of business on December 31 of each year, or shall obtain the approval of the Commissioner of Banks to designate any other closing date. When determining whether to designate a different closing date, the Commissioner shall consider what is in the best interest of depositors, borrowers, other customers, the institution's owners, employees, creditors, and the community in general.

(d) **Bonds and Other Obligations to be Carried at Actual Costs.** The bonds or other investments of a savings bank shall not be carried on its books at more than the actual costs thereof.

(e) **Real Estate to be Carried at Amount Invested in Same.** A savings bank shall not carry any real estate on its books at a sum in excess of the total amount invested by such savings bank on account of such real estate, including advances, costs, and improvements, but excluding accrued, uncollected interest.

(f) **Appraisal of Real Estate Owned.** Every savings bank shall appraise each parcel of real estate at the time of acquisition thereof. The report of each such appraisal shall be submitted in writing to the Board of Directors and shall be kept in the records of the savings bank.

(g) **Maintenance of Membership Records.** Every mutual savings bank shall maintain membership records, that shall show the name and address of the member, the status of member, status of the member as a deposit account holder, or an obligor, or a deposit account holder and obligor, and the date of the membership thereof.

(h) **Maintenance of Stockholder Records.** Every stock savings bank shall keep at its principal office or at the office of its transfer agent or register, a record of its stockholders that contains the names and addresses of all stockholders, and the number, class and series of shares held by each. Whenever called upon by the Commissioner of Banks, a stock savings bank shall file in the office of the Commissioner of Banks a correct list of all its stockholders, the resident address of each, the number of shares of stock held by each, and the dates of issue. When a savings bank has reason to believe ten percent or more of the outstanding capital stock of the savings bank is controlled by one owner, a savings bank shall notify the Commissioner of Banks in writing, and shall include the resident address and number of shares held by the shareholder.

History Note: Authority G.S. 54B-2; 54B-9; 54B-52; 54B-55; 54C-2; 54C-22; 54C-52; 54C-53;
Temporary Adoption Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Eff. February 15, 1992;
Amended Eff. December 1, 2011.

04 NCAC 16D .0407 LOANS TO ONE BORROWER

Upon a written determination by the Commissioner of Banks that an association is operating with unsafe and unsound lending practices, the Commissioner of Banks may establish more restrictive limits on loans to any one borrower than the limits established by the appropriate federal regulatory authority. These restrictive amounts shall be at such limits as the administrator deems appropriate to protect the public.

History Note: Authority G.S. 54B-55; 54B-164;
Eff. July 1, 1983;
Amended Eff. December 1, 2011; February 15, 1992; July 1, 1990; November 1, 1985; January 1, 1985.

04 NCAC 16D .0901 SECURITIES

An association may invest in any security that has been rated at least BAA or equivalent by a nationally recognized rating service. In no case may investments in BAA or equivalent securities exceed in the aggregate twenty five percent of net worth without the written permission of the Commissioner of Banks. Any such decision to allow the bank to transcend the stated limits are the standards of what would constitute a safe and sound banking practice for that bank at that time.

History Note: Authority G.S. 54B-55; 54B-193; 54C-53; 54C-141;
Eff. October 1, 1987;
Amended Eff. December 1, 2011; July 1, 1990.

04 NCAC 16D .0902 STOCK IN OTHER DEPOSITORY INSTITUTIONS

(a) No association shall invest in the stock of another depository institution without giving prior written notice to the Commissioner of Banks.

(b) No association shall invest in the aggregate more than five percent of its net worth in the stock of other depository institutions without the prior written approval of the Commissioner of Banks. Any such decision to allow the bank to transcend the stated limits are the standards of what would constitute a safe and sound banking practice for that bank at that time.

History Note: Authority G.S. 54B-55; 54B-193; 54C-53; 54C-141;
Eff. July 1, 1990;
Amended Eff. December 1, 2011; February 15, 1992.

04 NCAC 16E .0104 BYLAWS

The Commissioner of Banks shall be deemed to have approved any bylaws or amendments to which he has not objected within 25 days after the date on which such bylaws or amendments are filed.

*History Note: Authority G.S. 54C-53; 54C-102;
Temporary Adoption Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Eff. February 15, 1992;
Amended Eff. December 1, 2011.*

04 NCAC 16E .0301 GENERAL POLICIES

- (a) Records to be Kept at Principal Office. Every savings bank shall keep at the principal office correct and complete books of account and minutes of the proceedings of members, shareholders, directors and committees. Complete records of all business transacted at the principal office shall be maintained at the principal office. Everything relating to the business of a savings bank shall be examined and investigated by the Commissioner of Banks on a regular and periodic basis determined by the size and complexity and current expected condition and recent performance of the institution, the availability of examiners, coordination of state and federal schedules, the convenience of the institution, and any other requirements or constraints. Every savings bank and service corporation thereof shall be audited at least once in each calendar year by independent auditors. The audit shall be done on the basis of generally accepted accounting principles, unless otherwise provided by this Chapter. The savings bank shall file with the Commissioner of Banks one copy of the audit report along with one copy of the auditor's management letter and any other letters regarding the audit within 90 days after the end of its fiscal year, unless extended in writing by the Commissioner of Banks. Such extension by the Commissioner of Banks shall be granted upon a showing by the savings bank that the failure to file within 90 days of the close of its fiscal year was due to circumstances beyond its control or that compliance with the time period would have resulted in a substantial increase in audit costs. The savings bank shall also submit to the Commissioner of Banks a copy of the savings bank's written response to the auditor's management letter at the time such response is provided to the appropriate federal regulatory authority.
- (b) Records to be Prepared at Branch Office. Each branch office shall prepare records of all business transacted at such branch office, and shall furnish full control records to the principal office.
- (c) Closing Date for Books. Every savings bank shall close its books at the close of business on December 31 of each year, or shall obtain the approval of the Commissioner of Banks to designate any other closing date. When determining whether to designate a different closing date, the Commissioner shall consider what is in the best interest of depositors, borrowers, other customers, the institution's owners, employees, creditors, and the community in general.
- (d) Bonds and Other Obligations to be Carried at Actual Costs. The bonds or other investments of a savings bank shall not be carried on its books at more than the actual costs thereof.
- (e) Real Estate to be Carried at Amount Invested in Same. A savings bank shall not carry any real estate on its books at a sum in excess of the total amount invested by such savings bank on account of such real estate, including advances, costs, and improvements, but excluding accrued, uncollected interest.
- (f) Appraisal of Real Estate Owned. Every savings bank shall appraise each parcel of real estate at the time of acquisition

thereof. The report of each such appraisal shall be submitted in writing to the Board of Directors and shall be kept in the records of the savings bank.

(g) Maintenance of Membership Records. Every mutual savings bank shall maintain membership records, that shall show the name and address of the member, the status of member, status of the member as a deposit account holder, or an obligor, or a deposit account holder and obligor, and the date of the membership thereof.

(h) Maintenance of Stockholder Records. Every stock savings bank shall keep at its principal office or at the office of its transfer agent or register, a record of its stockholders that contains the names and addresses of all stockholders, and the number, class and series of shares held by each. Whenever called upon by the Commissioner of Banks, a stock savings bank shall file in the office of the Commissioner of Banks a correct list of all its stockholders, the resident address of each, the number of shares of stock held by each, and the dates of issue. When a savings bank has reason to believe ten percent or more of the outstanding capital stock of the savings bank is controlled by one owner, a savings bank shall notify the Commissioner of Banks in writing, and shall include the resident address and number of shares held by the shareholder.

*History Note: Authority G.S. 54B-2; 54B-9; 54B-52; 54B-55; 54C-2; 54C-22; 54C-52; 54C-53;
Temporary Adoption Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Eff. February 15, 1992;
Amended Eff. December 1, 2011.*

04 NCAC 16E .0405 LOANS TO ONE BORROWER

Upon a written determination by the Commissioner of Banks that a savings bank is operating with unsafe and unsound lending practices, the Commissioner of Banks may establish more restrictive limits on loans to any one borrower than the limits provided by G.S. 54C-130. These restrictive amounts shall be at such limits as the Commissioner of Banks deems appropriate to protect the public.

*History Note: Authority G.S. 54C-53; 54C-128;
Temporary Adoption Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;
Eff. February 15, 1992;
Amended Eff. December 1, 2011.*

04 NCAC 16E .0702 STOCK IN OTHER DEPOSITORY INSTITUTIONS

(a) No savings bank shall invest in the stock of another depository institution without giving prior written notice to the Commissioner of Banks. When determining whether to allow a savings bank to invest in stock of another depository institution, the Commissioner shall consider what is in the best interest of depositors, borrowers, other customers, the institution's owners, employees, creditors, and the community in general.

(b) A savings bank shall obtain the prior written approval of the Commissioner of Banks to invest, in the aggregate, more than five percent of its net worth in the stock of other depository institutions.

History Note: Authority G.S. 54C-53; 54C-141; Temporary Adoption Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992; Eff. February 15, 1992; Amended Eff. December 1, 2011.

04 NCAC 16F .0105 AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS

(a) Prior to filing with the Secretary of State of North Carolina, a service corporation shall file with the Commissioner of Banks copies of any proposed amendment to its articles of incorporation. The Commissioner of Banks must give his approval to the form and content of such proposed amendment as set forth in G.S. 54B-12 and G.S. 54B-13.

(b) Before the bylaws or any amendments to the bylaws of a service corporation can become effective, a certified copy of the bylaws or amendments shall be filed with and approved by the Commissioner of Banks as set forth in G.S. 54B-12 and G.S. 54B-13. In the event of the failure of the Commissioner of Banks to act upon the bylaws or amendment within 25 days of receipt, the bylaws or amendment shall be deemed approved.

History Note: Authority G.S. 54B-55; 54B-194; 54C-53; 54C-144; Eff. August 31, 1981; Amended Eff. December 1, 2011; July 1, 1990.

04 NCAC 16F .0108 FINANCE SUBSIDIARY TRANSACTIONS WITH PARENT

(a) A savings institution may provide the capital to establish one or more finance subsidiaries by transferring assets to one or more finance subsidiaries: Provided, that:

- (1) The aggregate book value of all assets transferred or made available to finance subsidiaries shall not, without the prior written approval of the Commissioner of Banks upon a showing by the savings institution that adherence to the limit would work a hardship upon the savings institution and that granting of the excess would enhance the safe and sound operation of the savings institution, exceed 30 percent of the book value of the savings institution's total assets determined as of the date any assets are transferred or made available;
- (2) The aggregate current market value of assets transferred or made available shall not, without the prior written approval of the Commissioner of Banks upon a showing by the savings institution that adherence to the limit would work a hardship upon the savings institution and that granting of the excess would enhance the safe and sound operation of the savings institution, exceed the amount necessary and customary for the issuance of the type of securities to be issued by the subsidiary or 200 percent of the gross proceeds resulting from the offerings of securities by the finance subsidiary, whichever is less.

For the purpose of calculating the limitations set forth in Subparagraphs (1) and (2) of Paragraph (a) of this Rule, assets which are considered to be transferred or made available to a finance subsidiary include assets to capitalize the finance subsidiary, to collateralize a securities offering by an established finance subsidiary, to maintain collateral levels for any security issued by the finance subsidiary. Assets also include the greater of the face amount of any guarantee issued by the parent with respect to the obligations of the finance subsidiary or the market value of any collateral for such guarantee.

(b) Finance subsidiaries shall not be consolidated with their parent for the purposes of calculating the net worth of the savings institution.

(c) A savings institution may guarantee any obligation issued to its finance subsidiaries; provided, that the face amount of the guarantee shall not exceed the unpaid principal balance of the obligation, and provided further, that the guarantee shall provide that the resources of the finance subsidiary issuing the obligation shall be exhausted before recourse shall be had to the guarantee. Such guarantee shall not be considered to be an outstanding loan for purposes of loans-to-one-borrower limitations. If such guarantee is collateralized, the greater of the face amount of the guarantee or the market value of the collateral shall be included in the total amount of assets that may be transferred by the parent subject to the limitation of Subparagraphs (1) and (2) of Paragraph (a) of this Rule.

(d) Any funds constituting the capital of an off-shore finance subsidiary may be invested in liquid assets, or in the stock, bonds, debentures, notes, or other obligations (including deposit accounts) of an affiliate of the parent: provided, that the earnings from such investments and the proceeds of any sale of such investments are remitted to the parent.

History Note: Authority G.S. 54B-55; 54B-77; 54B-195; 54C-53; 54C-144; 54C-146; Eff. October 1, 1984; Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992; Amended Eff. December 1, 2011; May 11, 1992.

04 NCAC 16F .0109 ISSUANCE OF SECURITIES BY FINANCE SUBSIDIARIES

(a) A finance subsidiary may issue any security which its parent is authorized to issue (or, if the parent is a mutual savings institution, would be authorized to issue if it converted to the stock form), subject to the provisions of this Subchapter as it relates to finance subsidiaries.

(b) A finance subsidiary shall not issue or deal in the deposits and savings accounts of its parent. A finance subsidiary shall not state or imply that securities issued by it are insured by the insurer of accounts of the parent.

(c) A finance subsidiary shall not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that its parent is insolvent or has been placed into receivership.

(d) A savings institution providing capital to a finance subsidiary shall own 100 percent of the finance subsidiary's outstanding voting common stock and may not transfer or otherwise assign any interest in such stock to any other person or

entity, without the prior written approval of the Commissioner of Banks upon a showing by the savings institution that adherence to the limit would work a hardship upon the savings institution and that approval of the exception would enhance the safe and sound operation of the savings institution.

(e) A finance subsidiary may provide for voting rights for holders of preferred stock, under such conditions and in such manner and to the extent customary to protect the rights of such holders of preferred stock, including but not limited to the following conditions (except that, upon the expiration of any event giving rise to the exercise of such voting rights, the voting rights shall be vested exclusively as provided in Paragraph (d) of this Rule):

- (1) The finance subsidiary fails to pay dividends for at least one dividend period;
- (2) Any merger, consolidation, or reorganization of the finance subsidiary or its parent (except in a supervisory case) is sought to be authorized, where the issuing finance subsidiary or its parent is not the survivor, provided that the net worth of the resulting finance subsidiary or parent available for payment of any class of preferred stock is less than the net worth available for such class prior to the merger, consolidation, or reorganization;
- (3) Action is sought to be authorized which would create any class of preferred stock having a preference or priority over an outstanding class or classes of preferred stock;
- (4) Action is sought to be authorized which would adversely change the specific terms of any class of preferred stock;
- (5) Action is sought to be authorized which would increase the number of shares of a class of preferred stock, or the number of shares of a class of preferred stock ranking prior to or in parity with another class of preferred stock; or
- (6) Action is sought which would authorize the issuance of an additional class or classes of preferred stock without the finance subsidiary having met specific financial standards as set forth in the preferred stock.

History Note: Authority G.S. 54B-55; 54B-77; 54B-195; 54C-53; 54C-144; 54C-146; Eff. October 1, 1984; Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992; Amended Eff. December 1, 2011; May 11, 1992.

04 NCAC 16F .0111 HOLDING COMPANY SUBSIDIARIES AND FINANCE SUBSIDIARIES

(a) If the parent is a subsidiary of a holding company, the finance subsidiary shall not be considered to be an affiliate of its parent.

(b) A finance subsidiary shall make no investment in, or loan, discount, or extension of credit to, its parent except as provided in Rule .0108 of this Subchapter, without the prior written

approval of the Commissioner of Banks upon a showing by the savings institution that the investment, loan, discount, or extension of credit will promote the safe and sound operation of the savings institution and the approval will not subvert the intent of this Rule.

(c) If the parent is a subsidiary of a holding company, a finance subsidiary shall make no investment in, or loan, discount or extension of credit to, any affiliate of its parent, except as provided in Rule .0108 of this Subchapter, without the prior written approval of the Commissioner of Banks upon a showing by the savings institution that the investment, loan, discount, or extension of credit will promote the safe and sound operation of the savings institution and the approval will not subvert the intent of this Rule.

History Note: Authority G.S. 54B-55; 54B-77; 54B-195; 54C-53; 54C-144; 54C-146; Eff. October 1, 1984; Temporary Amendment Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992; Amended Eff. December 1, 2011; May 11, 1992.

04 NCAC 16F .0112 NOTIFICATION TO THE COMMISSIONER OF BANKS

(a) Prior to the establishment of any finance subsidiary, or prior to any transfer of assets to an existing finance subsidiary, the Board of Directors of the savings institution shall send written notification to the Commissioner of Banks, specifying:

- (1) the name of the finance subsidiary;
- (2) the amount of assets (market and book value as of date within 30 days) to be transferred or made available (including the terms of any guarantee to be issued by the savings institution or any affiliate of the savings institution), the book value of all assets previously transferred or made available, and the amount representing 30 percent of the book value of the parent's total assets as of such date;
- (3) when known and to the extent permitted by the Securities Act of 1933:
 - (A) a description of the securities to be issued, including the term thereof;
 - (B) the aggregate amount of the offer;
 - (C) the anticipated interest or dividend rates and yields or the range thereof, and the frequency of payments;
 - (D) the minimum denomination of the securities; and
 - (E) the subsidiary intends to market the securities.

(b) Within ten days after the issuance of any security, a finance subsidiary shall notify, in writing, the Commissioner of Banks and shall provide to the Commissioner of Banks a copy of any prospectus, offering circular, or other similar document concerning an issuance.

History Note: Authority G.S. 54B-55; 54B-77; 54B-195; 54C-53; 54C-144; 54C-146;

Eff. October 1, 1984;
Temporary Amendment Eff. October 2, 1991 for a period of 180
days to expire on March 31, 1992;
Amended Eff. December 1, 2011; May 11, 1992.

**04 NCAC 16F .0113 EXAMINATION OF FINANCE
 SUBSIDIARIES**

A finance subsidiary shall agree in writing to permit and to pay the costs of such examinations as the Commissioner of Banks deems necessary.

History Note: Authority G.S. 54B-55; 54B-77; 54B-195; 54C-53; 54C-144; 54C-146;
Eff. October 1, 1984;
Amended Eff. December 1, 2011.

**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN
 SERVICES**

10A NCAC 10 .0102 DEFINITIONS

For the purpose of this Chapter, unless the context of the rule indicates a different meaning, the terms listed in this Rule are defined as follows:

- (1) "Department" means the Department of Health and Human Services.
- (2) "Director" means the Director of the Division of Child Development and Early Education.
- (3) "Division" means the Division of Child Development and Early Education, Department of Health and Human Services, located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
- (4) "Local Purchasing Agency" means the local agency responsible for administering the state's subsidized child care program.
- (5) "Owner" means any person with a five percent or greater equity interest in a child care center, family child care home, or nonlicensed child care home.
- (6) "Private Agency" means a private, for profit or non-profit, non-governmental entity.
- (7) "Provider" means the owner of a child care center, family child care home, or nonlicensed child care home.
- (8) "Recipient" means the parent or responsible adult approved for subsidized child care services pursuant to Section .1000 of this Chapter.
- (9) "Secretary" means the Secretary of the Department of Health and Human Services.
- (10) "Subsidized Child Care Program" means the administrative, programmatic and fiscal activities related to the use of public funds to pay for child care services for families.

History Note: Authority G.S. 143B-153 (2a);
Eff. February 1, 1986;

Amended Eff. December 1, 2011; April 1, 2001; February 1, 1996.

**10A NCAC 10 .0308 SANCTIONS AND APPEALS
 FOR FRAUDULENT MISREPRESENTATION**

(a) The local purchasing agency shall impose sanctions for fraudulent misrepresentation when a person, whether a provider or recipient of child care subsidies, or someone claiming to be a provider or recipient of child care subsidies, does the following:

- (1) With the intent to deceive, makes a false statement or representation regarding a material fact, or fails to disclose a material fact; and
- (2) As a result of the false statement or representation or the omission, obtains, attempts to obtain, or continues to receive a child care subsidy for himself or herself or for another person.

(b) The local purchasing agency shall impose the following sanctions for fraudulent misrepresentation in addition to requiring the recipient or provider to repay the amount of child care subsidy for which he or she is ineligible to receive:

- (1) After the first incidence of fraudulent misrepresentation by a recipient, the recipient shall be ineligible to receive subsidized child care services until overpayment is recouped in full or the local purchasing agency shall enter into a repayment agreement with the recipient if the recipient so desires;
- (2) After the second incidence of fraudulent misrepresentation by a recipient, the recipient shall be ineligible to participate in the subsidized child care program for three months; and
 - (A) shall repay the overpayment in full; or
 - (B) the local purchasing agency shall enter into a new repayment agreement with the recipient if the recipient so desires;
- (3) After the third incidence of fraudulent misrepresentation by a recipient, the recipient shall be permanently ineligible to participate in the subsidized child care program and shall repay the overpayment in full;
- (4) After the first incidence of fraudulent misrepresentation by a provider, the provider shall not be paid with subsidized child care funds for any new children who enroll in the provider's program for 12 months; and
 - (A) the provider shall repay the overpayment in full; or
 - (B) the local purchasing agency shall enter into a repayment agreement with the provider if the provider so desires; and
- (5) After the second incidence of fraudulent misrepresentation by a provider, the provider shall repay the overpayment in full, shall be

permanently ineligible to participate in the subsidized child care program, and shall not be reimbursed for any services provided to children enrolled in the provider's program from the date of notification of sanction in accordance with G.S. 150B-23(c).

(c) If a recipient or provider enters into a repayment agreement and fails to comply with terms of that agreement, eligibility to participate in the subsidized child care program shall cease until repayment is made in full or the recipient or provider and the local purchasing agency agree to modify the repayment agreement.

(d) Notwithstanding Subparagraphs (b)(4), (5), and (6) of this Rule, the recipient or provider shall be permanently ineligible to participate in the subsidized child care program if:

- (1) the total dollar amount of the fraudulent misrepresentation exceeds ten thousand dollars (\$10,000); or
- (2) the recipient or provider is convicted of fraudulent misrepresentation pursuant to G.S. 110-107.

(e) Sanctions pursuant to this Rule shall be effective 10 days from the date of notice of the sanction. Appeal of a sanction shall not stay the termination of payments under this Rule.

(f) A child care provider may appeal any sanction imposed in Paragraph (b) of this Rule pursuant to 10A NCAC 10 .0311 and 10A NCAC 10. 0312. A recipient may appeal any sanction imposed in Paragraph (b) of this Rule by following the appeals procedures pursuant to G.S. 108A-79.

(g) When a court of competent jurisdiction finds a recipient or provider guilty of fraudulent misrepresentation pursuant to Subparagraph (d)(2) of this Rule, the sanction imposed is not subject to appeal under this Section.

(h) Nothing in this Rule shall be construed as limiting child care services pursuant to 10A NCAC 10 .0906.

History Note: Authority G.S. 143B-153; Eff. April 1, 2001; Amended Eff. December 1, 2011.

10A NCAC 10 .0309 CORRECTION OF OVERPAYMENTS AND UNDERPAYMENTS

(a) An overpayment made as a result of inadvertent error or fraudulent misrepresentation by the recipient or provider as described in Rule .0308(a) of this Section shall be recouped as follows:

- (1) From the recipient if the recipient at the time the overpayment occurred was at least 18 years of age or older; and
- (2) By:
 - (A) voluntary repayment by the recipient or provider;
 - (B) involuntary repayment by pursuing court action; or
 - (C) wage garnishment as permitted by law.

(b) An overpayment made due to agency error in complying with program rules and statutes shall be corrected by adjustment through the state's subsidized child care payment system.

(c) An underpayment made due to agency or provider error in complying with program rules and statutes shall be corrected within 30 days of discovery of the error, but the local purchasing agency is not required to correct the underpayment if it is discovered more than 45 days from the date the payment is made.

(d) Appeals pursuant to this Rule shall be in accordance with 10A NCAC 10 .0311 and 10A NCAC 10 .0312.

History Note: Authority G.S. 143B-153; Eff. April 1, 2001; Amended Eff. December 1, 2011.

10A NCAC 10 .0310 REQUIREMENTS FOR THE ADMINISTRATION OF THE SUBSIDIZED CHILD CARE PROGRAM

(a) Any agency that administers child care services funding through the state's subsidized child care program shall maintain records of administration of the program for a period of three years, following the final report issued to the funding agency, or until all audits begun within the retention period are complete, whichever is longer.

(b) Any agency that administers the state's subsidized child care program shall provide records of administration of the program upon request for review by local, state, or federal agency representatives.

(c) Upon review of agency records of administration of the state's subsidized child care program, if it is found that child care services funding was not spent in accordance with applicable state or federal regulations, the Division shall require the agency to pay back funds improperly spent.

(d) Any agency that both administers the state's subsidized child care program and is a provider of subsidized child care services shall develop and implement a conflict of interest policy that shall include provision for:

- (1) parental choice for recipients of subsidized child care; and
- (2) separate management of the subsidized child care program and the child care facility owned or operated by the agency.

History Note: Authority G.S. 143B-153(2a); Eff. April 1, 2001; Amended Eff. December 1, 2011.

10A NCAC 10 .0311 PROVIDER APPEAL TO LOCAL PURCHASING AGENCY

(a) A provider or recipient wishing to contest an action shall request an initial review with the local purchasing agency within 30 calendar days of effective date of the local purchasing agency action.

(b) The local purchasing agency must make a determination on the initial review within 10 calendar days of the request for an initial review. Within 30 calendar days of notice of the determination on the initial review by the local purchasing agency, the provider may request a local appeal hearing by the local purchasing agency.

(c) The local appeal hearing shall be held within five calendar days of when the request is received. The local purchasing

agency shall grant a delay of up to 10 days at the written request of the provider, but in no event shall the local appeal hearing be held more than 15 calendar days after the receipt of the request for hearing.

(d) The local purchasing agency must serve a written statement of decision within 10 calendar days following the local hearing. The decision shall include the facts and conclusions which support the determination by the local purchasing agency.

(e) The local purchasing agency shall include with its written statement of decision instructions for appealing its decision.

(f) A provider may appeal the written statement of decision of the local purchasing agency to the State Subsidy Services Appeals Panel by filing a notice of appeal within 15 calendar days of receipt of the written statement of decision.

History Note: Authority G.S. 143B-153; Eff. December 1, 2011.

10A NCAC 10 .0312 APPEAL TO DIVISION OF CHILD DEVELOPMENT AND EARLY EDUCATION SUBSIDY SERVICES REVIEW PANEL

(a) Definitions.—The following definitions apply in this Rule:

- (1) "Appealing Party" means the Provider or Recipient, as defined in 10A NCAC 10 .0102.
- (2) "File or Filing" means personal delivery, delivery by certified mail, or delivery by overnight express mail to the current Chief of Subsidy Services Section (Chief), North Carolina Division of Child Development and Early Education (Division), 2201 Mail Service Center, Raleigh, NC 27699-2201. A document or paper is deemed filed as of the date it is delivered to the Chief. Filings addressed to a person other than the Division Director, or which fail to be filed within the time periods established by this Rule, or which otherwise fail to be filed in conformity with the rules in this Section shall be considered as improper filings and denied.
- (3) "State Subsidy Services Appeals Panel" means the North Carolina Division of Child Development and Early Education internal review panel established under this Rule.

(b) Appeals Panel.—The State Subsidy Services Appeals Panel (Panel) is established. The Panel shall be impartial and shall consist of one representative and one alternate representative for each Section of the Division. Representatives and alternates shall be chosen by each Section Chief.

(c) Who Can Appeal.—The following persons may appeal to the Panel after having exhausted the appeals process at the appropriate Local Purchasing Agency:

- (1) A provider or recipient to whom a local purchasing agency has issued a sanction pursuant to 10A NCAC 10 .0308;
- (2) A provider whom a local purchasing agency has failed to approve for participation in or has terminated participation the subsidized child care program pursuant to Section .0600 of this Chapter;

(3) A provider whom a local purchasing agency has failed to approve for participation in or has terminated participation the subsidized child care program pursuant to Section .0700 of this Chapter; and

(4) A provider wishing to contest the determination of overpayment pursuant to 10A NCAC 10 .0309.

(d) Hearing.—All members of the Panel shall hear an appeal to the Panel. An appeal shall be filed with the Panel within 30 days of exhausting the appeals process at the local purchasing agency as described as follows:

- (1) The Subsidy Services Chief shall notify the Local Purchasing Agency (LPA) that an appeal has been filed; and
- (2) Upon notification of an appeal filed pursuant to this section, the LPA shall, within five days of the date of notification, forward to the Chief, with a copy to the appellant:
 - (A) a copy of its final decision;
 - (B) the signed agreement between the LPA and the provider or recipient, where applicable; and
 - (C) all supplementary documentation considered during the local appeals process.

(e) The Panel shall convene and shall maintain a record of their decision in the appeal and the reason(s) for their decision.

(f) The Panel shall vote on each item being appealed.

(g) Findings and decisions of the Panel shall be by majority vote.

(h) The Panel may obtain any form of technical assistance or consultation relevant to the appeal in conducting the administrative review.

(i) The Panel shall complete an administrative review and notify the appealing party and the LPA of its decision in writing within 20 business days of the Panel's receipt of the appeal record. The decision shall include the facts and conclusions which support the determination by the State Subsidy Services Appeals Panel.

(j) Any decision shall be delayed until a subsequent meeting if the Panel determines that it lacks sufficient information to render a decision at the initial administrative review.

(k) The administrative review decision shall be distributed within 10 business days of the decision being rendered.

(l) The appellant may appeal the administrative review decision by filing a petition for contested case pursuant to G.S. 150B-23 and in accordance with G.S. 110-94. Appeals from the State Subsidy Appeals Panel must be filed within 30 days of mailing of the Panel's decision to the parties.

(m) Decision.—A decision may direct an LPA to take an action or to refrain from taking an action.

History Note: Authority G.S. 143B-153; Eff. December 1, 2011.

10A NCAC 10 .0506 RECORDS

(a) If the private agency is organized as a corporation or unincorporated association, it shall upon request of the

Department or other contractor, open its minute books of meetings of directors, shareholders, or members for inspection.

(b) Each private agency administering state child care funds shall maintain records of all receipts and disbursements for a period of three years following the final report issued to the funding agency, or until all audits begun within the retention period are complete, whichever is longer.

(c) If a private agency ceases operation, it shall provide the Department with copies of the records specified in this Rule.

(d) Each private agency administering state or federal child care services funds shall have a written policy for the inspection, examination, and copying of records maintained by the agency. The written policy shall comply with the provisions of Chapter 132 of the General Statutes.

History Note: Authority G.S. 143B-153(2a); Eff. July 1, 1992; Amended Eff. December 1, 2011; April 1, 2001.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02B .0304 FRENCH BROAD RIVER BASIN

(a) Effective February 1, 1976, the adopted classifications assigned to the waters within the French Broad River Basin are set forth in the French Broad River Basin Schedule of Classifications and Water Quality Standards, which may be inspected at the following places:

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
 - (A) Asheville Regional Office
2090 US Highway 70
Swannanoa, North Carolina
 - (B) Division of Water Quality
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Tennessee are classified "B."

(c) The French Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) September 22, 1976;
- (2) March 1, 1977;
- (3) August 12, 1979;
- (4) April 1, 1983;
- (5) August 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) May 1, 1987;
- (9) August 1, 1990.

(d) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective March 1, 1989 as follows:

- (1) Cataloochee Creek (Index No. 5-41) and all tributary waters were reclassified from Class

C-trout and Class C to Class C-trout ORW and Class C ORW.

- (2) South Fork Mills River (Index No. 6-54-3) down to Queen Creek and all tributaries were reclassified from Class WS-I and Class WS-III-trout to Class WS-I ORW and Class WS-III-trout ORW.

(e) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1989 as follows: Cane River (Index No. 7-3) from source to Bowlens Creek and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(f) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective January 1, 1990 as follows: North Toe River (Index No. 7-2) from source to Cathis Creek (Christ Branch) and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(g) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1993 as follows: Reasonover Creek [Index No. 6-38-14-(1)] from source to Reasonover Lake Dam and all tributaries were reclassified from Class B Trout to Class WS-V and B Trout, and Reasonover Creek [Index No. 6-38-14-(4)] from Reasonover Lake Dam to Lake Julia Dam and all tributaries were reclassified from Class C Trout to Class WS-V Trout.

(i) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective July 1, 1995 with the reclassification of Cane Creek [Index Nos. 6-57-(1) and 6-57-(9)] from its source to the French Broad River from Classes WS-IV and WS-IV Tr to Classes WS-V, WS-V Tr and WS-IV.

(j) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective November 1, 1995 as follows: North Toe River [Index Numbers 7-2-(0.5) and 7-2-(37.5)] from source to a point 0.2 miles downstream of Banjo Branch, including tributaries, has been reclassified from Class WS-III, WS-III Trout and WS-III Trout CA (critical area) to Class WS-IV Trout, WS-IV, WS-IV Trout CA, and C Trout.

(k) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended

effective January 1, 1996 as follows: Stokely Hollow [Index Numbers 6-121.5-(1) and 6-121.5-(2)] from source to mouth of French Broad River has been reclassified from Class WS-II and Class WS-II CA to Class C.

(l) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended April 1, 1996 with the reclassification of the French Broad River [Index No. 6-(1)] from a point 0.5 miles downstream of Little River to Mill Pond Creek to Class WS-IV; French Broad River [Index No. 6-(51.5)] from a point 0.6 miles upstream of Mills River to Mills River to Class WS-IV CA (Critical Area), from Mills River to a point 0.1 miles upstream of Boring Mill Branch to Class C; and the Mills River [Index No. 6-54-(5)] was reclassified from City of Hendersonville water supply intake to a point 0.7 miles upstream of mouth of Mills River to Class WS-III, and from a point 0.7 miles upstream of mouth of Mills River to French Broad River to Class WS-III CA (Critical Area).

(m) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 1998 with the revision to the primary classification for portions of the French Broad River [Index No. 6-(38.5)] and the North Toe River 7-2-(10.5) from Class IV to Class C.

(n) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 1998 with the reclassification of Clear Creek [Index No. 6-55-(1)] from its source to Lewis Creek from Class C Tr to Class B Tr.

(o) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 2000 with the reclassification of Rough Creek [Index No. 5-8-4-(1)], including all tributaries, from its source to the Canton Reservoir from Class WS-I to Class WS-I Tr ORW.

(p) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 2002 with the revision to the primary classification for the French Broad River [Index No. 6-(1), 6-(27), 6-(47.5), 6-(52.5), and 6-(54.5)] including its four headwater forks' mainstems, watershed of tributary Davidson River, and watershed of tributary Bent Creek below Powhatan Dam, and the Nolichucky River [Index No. 7] including a lower portion of the North Toe River from Class C and Class WS-IV to Class B.

(q) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended August 1, 2002 with the reclassification of the North Toe River [Index No. 7-2-(0.5)], including all tributaries, from source to a point 0.2 mile upstream of Pyatt Creek, from Class C Tr to Class WS-V Tr.

(r) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended September 1, 2004 with the reclassification of a portion of Richland Creek [Index No. 5-16(1)], from source to a point approximately 11.2 miles from source (Boyd Avenue), from Class B to Class B Tr, and all tributaries to the portion of the creek referenced in this Paragraph from C, C HQW, and WS-I HQW, and WS-I HQW to C Tr, C HQW Tr, and WS-I HQW Tr, respectively, except Hyatt Creek [Index No. 5-16-6], Farmer Branch [Index No. 5-16-11], and tributaries already classified as Tr.

(s) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective

November 1, 2007 with the reclassification of McClure's Bog near Gash Creek [Index No. 6-47] to Class WL UWL as defined in 15A NCAC 02B .0101. The North Carolina Division of Water Quality maintains a Geographic Information Systems data layer of the UWL.

(t) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective September 1, 2009 with the reclassification of the entire watershed of Big Laurel Creek (Index No. 6-112) from source to the French Broad River from Class C Tr to Class C ORW Tr.

(u) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective September 1, 2009 with the reclassification of the entire watershed of Spring Creek [Index No. 6-118-(1) and 6-118-(27)] from source to the French Broad River from Class C Tr and Class C to Class C ORW Tr and Class C ORW.

(v) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin is amended December 1, 2011 with the reclassification of a portion of the French Broad River [Index No. 6-(54.5)] from the confluence of the Mills River to a point 0.2 miles downstream of the confluence of the Mills River from Class B to Class WS-IV&B CA.

History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);

Eff. February 1, 1976;

Amended Eff. December 1, 2011; September 1, 2009; November 1, 2007; September 1, 2004; August 1, 2002; August 1, 2000; August 1, 1998; April 1, 1996; January 1, 1996; November 1, 1995; July 1, 1995.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 17 – BOARD OF DIETETICS/NUTRITION

21 NCAC 17 .0101 DEFINITIONS

As used in this Chapter, the following terms and phrases, which have not already been defined in the Practice Act, G.S. 90-350 through 90-369, have the meanings specified:

- (1) "Act" means Dietetics/Nutrition Practice Act.
- (2) "ADA" means The American Dietetic Association.
- (3) "Applicant" means any person who has applied to the Board for a license to practice dietetics/nutrition in the State of North Carolina.
- (4) "Application" means a written request directed to and received by the Board, on forms supplied by the Board, for a license to practice dietetics/nutrition in the State of North Carolina, together with all information, documents and other materials necessary for the Board to act on that application.
- (5) "CDR" means the Commission on Dietetic Registration which is a member of the

- National Commission for Health Certifying Agencies.
- (6) "CADE" means the Commission on Accreditation for Dietetics Education.
 - (7) "Degree" means a degree received from a college or university that was regionally accredited at the time the degree was conferred.
 - (8) "Dietitian/nutritionist" means one engaged in dietetics/nutrition practice.
 - (9) "Executive Secretary" means the person employed to carry out the administrative functions of the Board.
 - (10) "Health care practitioner" includes any individual who is licensed under G.S. 90.
 - (11) "Nutrition assessment" means the evaluation of the nutrition needs of individuals and groups based upon biochemical, anthropometric, physical, and food intake and diet history data to determine nutritional needs and recommend appropriate nutrition intake including enteral and parenteral nutrition.
 - (12) "Nutrition counseling" means the advice and assistance provided by licensed dietitians/nutritionists to individuals or groups on nutrition intake by integrating information from the nutrition assessment with information on food and other sources of nutrient and meal preparation consistent with cultural background, socioeconomic status and therapeutic needs.
 - (13) "Provisionally licensed dietitian/nutritionist" means a person provisionally licensed under the act.
 - (14) "Equivalent major course of study" means one which meets the knowledge requirements of the ADA-Approved Didactic Program in Dietetics as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Didactic Programs in Dietetics (DPD)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at: <http://www.eatright.org/CADE/content.aspx?id=57>.
 - (15) "Supervised practice program" means one which meets the standards of the ADA-accredited Dietetic Internship Program as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Dietetic Internship Programs (DI)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at:

<http://www.eatright.org/CADE/content.aspx?id=57>.

- (16) "Medical nutrition therapy" (MNT) is an evidence-based application of the Nutrition Care Process, as currently defined by the ADA, focused on prevention, delay or management of diseases and conditions, and involves an in-depth assessment, periodic reassessment and intervention. The ADA's definition of "Nutrition Care Process," which is listed in the ADA's "Definition of Terms List," is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this publication can be found on the ADA's website at: <http://www.eatright.org/HealthProfessionals/content.aspx?id=6867>.

History Note: Authority G.S. 90-352; 90-356; Temporary Adoption Eff. March 19, 1992 for a period of 180 days to expire on September 13, 1992; Eff. June 1, 1992; Recodified from 21 NCAC 17 .0001 Eff. February 1, 1995; Amended Eff. December 1, 2011; April 1, 2010; July 18, 2002; March 1, 1996.

21 NCAC 17 .0103 QUALIFICATIONS FOR LICENSURE

Each applicant for an initial license as a licensed dietitian/nutritionist shall meet the qualifications as set forth in G.S. 90-357.

History Note: Authority G.S. 90-356; 90-357; Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992; Eff. June 1, 1992; Recodified from 21 NCAC 17 .0003 Eff. February 1, 1995; Amended Eff. December 1, 2011; July 18, 2002.

21 NCAC 17 .0104 APPLICATIONS

- (a) Each applicant for initial licensure or renewal shall file a completed application with the Board.
- (b) Applicants shall submit an application that is typed or written in ink, signed by the applicant under the penalty of perjury and accompanied by the appropriate nonrefundable fees and by such evidence, statements or documents showing to the satisfaction of the Board that applicant meets requirements.
- (c) Applicants shall submit a completed application to: North Carolina Board of Dietetics/Nutrition, 1000 Centre Green Way, Suite 200, Cary, NC 27513.
- (d) Applications and all documents filed in support thereof shall become the property of the Board upon receipt.
- (e) The Board shall not consider an application until the applicant pays the application fee.
- (f) Applicants seeking examination eligibility from the Board must submit the application at least 60 days prior to the date the applicant wishes to take the examination.

(g) The Executive Secretary shall send a notice to an applicant who does not complete the application which lists the additional materials required.

(h) Applicants, who must provide evidence of current registration as a Registered Dietitian by the CDR in G.S. 90-357(3)a, shall submit a notarized photocopy of the applicant's signed registration identification card.

(i) Applicants, who must provide evidence of completing academic requirements in G.S. 90-357(3) b.1, c.1 and d, shall either:

- (1) Submit transcripts and a verification statement which includes the original signature of the Program Director of a college or university in which the course of study has been approved by the Commission on Accreditation for Dietetics Education as meeting the current knowledge requirements of the ADA; or
- (2) Submit sufficient documentation for the Board to determine if the equivalent major course of study meets the ADA requirements as referenced in 21 NCAC 17 .0101(14).

(j) Applicants, who must provide evidence of completing supervised practice program in G.S. 90-357(3)b.2 and c.2, shall either:

- (1) Submit a verification statement which includes the original signature of the Program Director or Sponsor of a supervised practice program; or
- (2) Submit sufficient documentation for the Board to determine if the supervised practice program meets the ADA requirements as referenced in 21 NCAC 17 .0101(15).

(k) Applicants who have obtained their education outside of the United States and its territories must:

- (1) Have their academic degree evaluated by CDR, as equivalent to the baccalaureate or higher degree conferred by a U.S. college or university accredited by the regional accrediting agencies recognized by the Council on Postsecondary Accreditation and the U.S. Department of Education; and
- (2) Have any Board required documents submitted in a language other than English be accompanied by a certified translation thereof in English from World Education Services, Inc.

History Note: Authority G.S. 90-356; Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992; Eff. June 1, 1992; Recodified from 21 NCAC 17 .0004 Eff. February 1, 1995; Amended Eff. December 1, 2011; July 18, 2002; March 1, 1996.

21 NCAC 17 .0107 PROVISIONAL LICENSE

(a) Applicants for a provisional license shall provide evidence of completing academic requirements by:

- (1) Submitting transcripts and a verification statement which includes the original signature

of the Program Director of a college or university in which the course of study has been approved by the Commission on Accreditation for Dietetics Education as meeting the current knowledge requirements of the ADA; or

- (2) Submit sufficient documentation for the Board to determine if the equivalent major course of study meets the ADA requirements as referenced in 21 NCAC 17 .0101(14).

(b) Applicants shall provide evidence of completing a supervised practice program by:

- (1) Submitting a verification statement which includes the original signature of the Program Director or Sponsor of a supervised practice program which has been approved by CDR to meet the dietetic practice requirements of ADA; or
- (2) Submit sufficient documentation for the Board to determine if the supervised practice program meets the ADA requirements as referenced in 21 NCAC 17 .0101(15).

(c) Applicants shall provide evidence of making application to take the examination.

(d) A provisional license shall be issued for a period not exceeding one year upon the applicant completing the following:

- (1) payment of issuance fees;
- (2) submission of a completed application as provided by the Board; and
- (3) provision of evidence of being under the supervision of licensed dietitian(s)/nutritionist(s).

(e) Following the successful completion of the licensing examination, the provisionally licensed dietitian/nutritionist shall remit completed application for upgrading license, payment of fees, and evidence of passing examination referenced in 21 NCAC 17 .0105. If the provisionally licensed dietitian/nutritionist successfully completes the licensing examination and obtains a license pursuant to G.S. 90-357 within six months of the date that the provisional license became effective, the provisional license or renewal fee shall be deducted from the issuance fee.

History Note: Authority G.S. 90-356; 90-361; Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992; Eff. June 1, 1992; Recodified from 21 NCAC 17 .0007 Eff. February 1, 1995; Amended Eff. December 1, 2011; July 18, 2002; March 1, 1996; February 1, 1995.

21 NCAC 17 .0109 ISSUANCE AND RENEWAL OF LICENSE

(a) An applicant shall be issued a license based on compliance with requirements stated in G.S. 90-357 and the rules in this Chapter.

(b) A licensee shall notify the Board of any change in the licensee's personal or professional address within 30 days of that change.

(c) Licenses shall expire on March 31 of every year. Beginning in 1993, the licenses shall be issued for a period of one year beginning April 1 and ending March 31.

(d) At least 60 days prior to the expiration date of the license, the Board shall send the licensee written notice of the amount of renewal fee due, and instructions on how to obtain a license renewal form which must be submitted with the required fee.

(e) A licensee's renewal application must be postmarked prior to the expiration date in order to avoid the late renewal fee. Failure to receive renewal notice is not justification for late renewal.

(f) The Board may not renew the license of a person who is in violation of the Act, or Board rules at the time of application for renewal.

(g) Applicants for renewal of licenses shall provide documentation of having met continuing education requirements by submitting either:

- (1) Evidence of completing continuing education hours to maintain certification as a Registered Dietitian by the Commission on Dietetic Registration. These standards are contained in the "Professional Development Portfolio Guide", which is hereby incorporated by reference including subsequent amendments or additions of reference material. Copies of this standard may be obtained at no charge from the Commission on Dietetic Registration's website at: <http://www.cdrnet.org/pdrcenter/>; or
- (2) A summary of continuing education on the form provided by the Board documenting completion of 30 hours of continuing education for a two year period. The continuing education hours must meet the standards contained in the "Professional Development Portfolio Guide."

(h) A renewal license shall be furnished to each licensee who meets all renewal requirements by the expiration date.

(i) The Board shall renew a license upon the payment of a late fee within 60 days of the expiration date of March 31. If the license has been expired for 60 days or less, the license may be renewed by returning the license renewal form with all appropriate fees and documentation to the Board, postmarked on or before the end of the 60-day grace period.

History Note: Authority G.S. 90-356; 90-362; 90-363; Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992; Eff. June 1, 1992; Recodified from 21 NCAC 17 .0009 Eff. February 1, 1995; Amended Eff. December 1, 2011; July 18, 2002; February 1, 1995.

21 NCAC 17 .0201 DEFINITIONS

As used in G.S. 90-368(7) and this Section, the following terms and phrases, which have not already been defined in the Practice Act, G.S. 90-350 through 90-369, have the meanings specified:

- (1) A "weight control program or service" means a general program of instruction with food, supplements, food products or a food plan

designed for one or more healthy population groups in order to achieve or maintain a healthy weight. A weight control program is not based on an individual nutrition assessment as referenced in G.S. 90-352 and 21 NCAC 17 .0101(11) and is not individualized to provide medical nutrition therapy as defined in 21 NCAC 17 .0101(16) or nutrition care services as defined in G.S. 90-352 to manage, treat or rehabilitate a medical condition, illness, or injury for a specific person or group;

- (2) A "review" means the consideration and evaluation of a weight control program or service, in accordance with this Section, which results in either an approval or a disapproval of the program by a reviewer, as defined in this Rule;
- (3) "Reviewer" means a person who is:
 - (a) a licensed dietitian/nutritionist;
 - (b) a dietitian/nutritionist licensed in another state that has licensure requirements that are at least as stringent as under G.S. 90, Article 25; or
 - (c) a dietitian registered by the Commission on Dietetic Registration of the ADA;
- (4) "Weight control provider" means a person who provides weight control services through a weight control program as referenced in G.S. 90-368(7).
- (5) "Written assessment" means a written review and approval by a reviewer of weight control program and weight control services with respect to the following:
 - (a) the screening process;
 - (b) the weight control food plan, supplements, food, or food products for the program's clients;
 - (c) nutritional adequacy and scientific evidence-based nutrition practices;
 - (d) materials, which include written nutrition education handouts, recorded education materials, lesson or instructional plans, food plans and screening tools;
 - (e) rate of weight change promoted; and
 - (f) provision of a maintenance or follow up program.

History Note: Authority G.S. 90-356; 90-368; Eff. February 1, 1995; Amended Eff. December 1, 2011; March 1, 1996.

21 NCAC 17 .0203 REVIEW AND BOARD ACTION

- (a) In order to create a presumption of compliance with the exemption provided in G.S. 90-368(7) a weight control provider may submit to the Board the information referenced in

Paragraphs (b) and (c) of this Rule. Submission of such information is not a prerequisite for meeting the exemption.

(b) A weight control provider shall be presumed to be in compliance with the exemption if the provider submits to the Board:

- (1) a written statement that is signed and dated by the weight control provider that provides and certifies the following information:
 - (A) the name and address of the weight control provider and physical location of the weight control program;
 - (B) the name and address of a reviewer that has provided a written assessment and approval of the weight control program and weight control services as provided by this Rule;
 - (C) that a reviewer has provided a written assessment of the weight control program and weight control services and approved the program and services as provided by 21 NCAC 17 .0201(5);
 - (D) that no program change can be initiated without prior approval of a reviewer;
 - (E) that the weight control provider agrees to adhere to the weight control program, including program changes, that has been reviewed and approved by a reviewer; and
 - (F) that the weight control provider agrees that if the program is changed in relation to any of the elements of the written assessment provided by a reviewer pursuant to this Rule that the weight control provider shall submit to the Board a signed statement of a reviewer indicating a reviewer's approval of the program change;
- (2) a copy of a reviewer's written assessment and approval as provided by 21 NCAC 17 .0201(5) that is dated not more than 90 days prior to the date that the weight control provider's written statement referenced in Subparagraph (a)(1) of this Rule is submitted to the Board; and
- (3) a copy of a written statement signed by a reviewer that consultation is available to the weight control provider from the reviewer and that states the name and address of that person.

(c) If there is a program change, after a reviewer's written assessment and approval as provided by 21 NCAC 17 .0201(5), a weight control provider is presumed to be in compliance with the exemption provided in G.S. 90-368(7) if the provider submits to the Board a written statement that provides and certifies the information required by Subparagraph (b)(1) of this Rule and a copy of a reviewer's written assessment and approval of the program change that is dated not more than 90 days prior

to the date the weight control provider's written statement is submitted to the Board.

History Note: Authority G.S. 90-356; 90-368; Eff. February 1, 1995; Amended Eff. December 1, 2011.

21 NCAC 17 .0303 SUPERVISION

(a) A planned, continuous program in clinical practice pursuant to G.S. 90-357(3)b.2. shall designate a licensed dietitian/nutritionist who shall supervise a student or trainee; and

- (1) shall meet the qualifications of the current standards of education as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Dietetic Internship Programs (DI)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at: <http://www.eatright.org/CADE/content.aspx?id=57>; and
- (2) shall meet his/her employment qualifications of the sponsoring institution, if any.

(b) In accordance with the current standards of education referenced in this Rule, a Program Director shall:

- (1) provide student/trainee advisement, evaluation, counseling and supervision;
- (2) provide academic or supervised practice program assessment, planning, implementation and evaluation;
- (3) inform student(s)/trainee(s) of laws, regulations and standards affecting the practice of dietetics/nutrition, including the Dietetics/Nutrition Practice Act and its Rules; and
- (4) advise student(s)/trainee(s) on meeting the requirements to be licensed to practice dietetics/nutrition.

History Note: Authority G.S. 90-356(2); 90-357; Eff. March 1, 1996; Amended Eff. December 1, 2011; July 18, 2002.

CHAPTER 25 – INTERPRETER AND TRANSLITERATOR LICENSING BOARD

21 NCAC 25 .0209 DENIAL OF CERTAIN LICENSE APPLICATIONS

(a) License applications filed by any person who has willfully violated G.S. 90D-4(a) shall be denied for a period of two years following the last date on which the person violated G.S. 90D-4(a).

(b) License applications filed by any person who has given false information to, or withheld information from, the Board while seeking a license shall be denied for a period of two years

following the last date on which the person gave false information to, or withheld information from, the Board.

(c) License applications filed by any person whose license has been revoked by the Board on any grounds other than G.S. 90D-12(1), (2) and (5) shall be denied for a period of two years following the revocation.

(d) License applications filed by any person whose license has been revoked pursuant to G.S. 90D-12(5) for failing to pay child support after having been ordered to do so by a court of competent jurisdiction, or for failing to comply with a subpoena issued pursuant to a child support or paternity establishment proceeding, shall be denied until the Board receives a certification from the appropriate clerk of court that the person is no longer delinquent in child support payments or that the person has complied with, or is no longer subject to, the subpoena.

(e) License applications filed by any person who has willfully failed to pay a civil penalty that was assessed pursuant to G.S. 90D-14 and has not been temporarily or permanently stayed by an administrative or judicial order shall be denied until the civil penalty has been paid.

History Note: Authority G.S. 50-13.12; 90D-6; 90D-12; Eff. March 21, 2005; Amended Eff. January 1, 2012; August 1, 2007.

CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

21 NCAC 50 .0303 VISITORS

History Note: Authority G.S. 87-18; 87-20; 87-21(a); 87-21(b); Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. May 1, 1989; Repealed Eff. December 31, 2011.

21 NCAC 50 .0308 REVIEW OF EXAMINATION

Any person who fails to pass an examination may, on written request, review his or her examination at a time and place determined by the Board.

History Note: Authority G.S. 87-18; 87-21(b); 87-25; 93B-8(c); Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. December 31, 2011; January 1, 2010; December 1, 2003; August 1, 2002.

21 NCAC 50 .0402 PERMITS

(a) A licensed contractor shall ensure that a permit is obtained from the local Code Enforcement official before commencing any work for which a license is required by the Board, except as set out in Paragraph (c) of this Rule. The contractor shall also ensure that a request for final inspection of the work for which a

license is required is made by himself, the general contractor or the owner within 10 days of the earlier of the system being made operational or placed in service, absent agreement with the owner and the local Code Enforcement official. Absent agreement with the local Code Enforcement official the licensee is not relieved by the Board of responsibility to arrange inspection until a certificate of compliance or the equivalent is obtained from the local code enforcement official or the licensee has clear and convincing evidence of his effort to obtain same.

(b) A licensed contractor shall not allow a permit to be obtained or his license number to appear upon a permit except for work which he or his employees perform, over which he or a properly licensed technician will provide general supervision until the completion of the work for which he holds an executed contract with the licensed general contractor or property owner and for which he receives all contractual payments.

(c) A plumbing permit is not required for replacement of a water heater in a one or two-family dwelling under circumstances set out in G.S. 153A-357 or G.S. 160A-417.

(d) The failure of a licensee to comply with the permit and inspection obligations outlined in this Rule is considered by the Board as evidence of incompetence or misconduct in the use of license from the Board.

History Note: Authority G.S. 87-18; 87-21; 87-26; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. December 31, 2011; January 1, 2010; December 1, 2003; August 1, 2000; September 1, 1995; November 1, 1993; May 1, 1989.

21 NCAC 50 .0403 USE OF LICENSE

(a) A licensed contractor or technician shall not permit the use of his license by any other person.

(b) A contractor licensed by the Board shall not bid or contract installations requiring license of a type or classification issued by this Board which the licensee does not have except as a part of a documented joint venture with a licensee holding the necessary qualification. Bidding without qualification and with an intention to subcontract the unauthorized work does not satisfy this requirement; provided however that, in a contract administered pursuant to G.S. 143-129 and in which more than one classification administered by this Board has been combined in the separate contract specifications, a licensee of this Board holding either of such qualifications may bid both of such classifications of work administered by this Board in addition to the classification for which he holds license if the successful bidder obtains an executed written contract with a qualified licensee prior to the award of the contract by the awarding authority.

(c) A technician licensed by this Board shall not contract work based on the Technician license.

History Note: Authority G.S. 87-18; 87-23; 87-26; Eff. February 1, 1976; Readopted September 29, 1977; Amended Eff. December 31, 2011; November 1, 1993; May 1, 1989.

21 NCAC 50 .0404 ACTIVE EMPLOYMENT

(a) In each business location, branch or facility of any kind from which work requiring a license pursuant to G.S. 87, Article 2 is:

- (1) solicited or proposed;
- (2) from which contracts for such work are negotiated or entered into;
- (3) from which requests for such work are received, accepted, or dispatched; or
- (4) from which such work is carried out;

there shall be on duty the lesser of 1500 hours annually, or all hours during which the activities described herein are carried out, at least one individual who holds contractor license in the classification required for the work being proposed or performed, whose license is listed in the name of the particular firm or business at that location, and who is engaged in the work of the firm at the business location or at firm job sites and who has the responsibility to make, modify, terminate and set the terms of contracts, and to exercise general supervision, as defined in Rule .0505 of this Chapter, of all work falling within his license qualification. Evidence of compliance shall be required as a condition of renewal or retention of license, and falsification shall constitute fraud in obtaining license. The standards set forth in Rule 21 NCAC 50 .0512 shall be applied.

(b) If a licensee uses his or her license to qualify a firm and that licensee holds employment elsewhere, no work that requires a license may be performed by the firm based on the qualification of that licensee during the hours the licensee is committed or active in employment elsewhere.

(c) A field or project office used solely to carry out an existing contract or contracts entered into by the main license office and from which none of the other activities in Rule .0404(a) are conducted shall not be deemed a separate place of business or branch requiring compliance with Rule .0404(a).

(d) A Class A Gas Dealer as defined in G.S. 119-56 or provider of natural gas holding certificate of public convenience and necessity under Chapter 62 of the General Statutes shall not contract or carry out fuel piping installations which require a license from this Board unless such Dealer or natural gas provider employs in the particular office or branch a fulltime bona-fide employee, who holds a Fuel Piping Technician license or Fuel Piping Contractor license and whose license is listed in the name of the Dealer or natural gas provider at the specific branch office consistent with Paragraph (a) of this Rule.

History Note: Authority G.S. 87-18; 87-21(a)(5); 87-21(a)(6); 87-26; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. December 31, 2011; January 1, 2010; January 1, 2004; August 1, 2002; August 1, 2000; July 1, 1998; July 1, 1991; May 1, 1989.

21 NCAC 50 .0405 MULTIPLE LICENSES

(a) In order to maintain the identity of firms and allow effective supervision, each licensed contractor or technician shall qualify only the business location where he is primarily located.

(b) A licensee may be listed on only one contractor license at any given time, whether the license is issued in the name of the individual or in the name of a firm; provided, however, that the fire sprinkler maintenance technician qualification may be listed separately in the name of the employer to which restricted.

(c) The holder of qualification as a contractor may, upon deletion of his name and qualifications from a firm license, reinstate his personal license, either as an individual or in the name of some other corporation, partnership, or business that has a trade name, upon compliance with G.S. 87-26.

(d) A technician licensee, other than the holder of a Fire Sprinkler Maintenance Technician license, may, upon deletion of his name and qualification from a firm license, move his qualification to another licensed corporation, partnership or business which has a trade name, upon compliance with G.S. 87-26.

History Note: Authority G.S. 87-18; 87-21(a)(5); 87-21(a)(6); 87-26; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. December 31, 2011; January 1, 2010; January 1, 2004; July 1, 1998; May 1, 1989.

21 NCAC 50 .0406 RESPONSIBILITY OF LICENSED PERSON EMPLOYED BY FIRM

(a) A licensed contractor, whether individually or for a corporation, partnership or business with a trade name, is responsible for all proposals, bids, contracts, supervision to the extent of his qualifications, compliance with all applicable codes and standards, and assurance that permits and inspections are obtained.

(b) A contract, and the responsibility imposed on a licensed person to supervise work performed under a contract, may be assumed by another licensed contractor upon written notice to and approval by the property owner and local inspection department.

(c) The contractor license number and qualification of the firm shall be displayed on firm contracts, proposals, permit applications, and telephone yellow page advertising.

History Note: Authority G.S. 87-18; 87-26; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. December 31, 2011; January 1, 2004; August 1, 2000; May 1, 1989.

21 NCAC 50 .0407 CORPORATIONS, PARTNERSHIPS AND TRADE NAMES

(a) Licensees are required to list their license with the Board in the name in which they conduct business.

(b) A contractor license may be issued or renewed in the name of a corporation, partnership or business with a trade name upon compliance with the provisions of G.S. 87-26, verified by the execution of forms furnished by the Board.

(c) Additional licensees may be added to licenses issued in the above manner upon verifications of compliance with the provisions of G.S. 87-26. If a licensee terminates his association with a corporation, partnership, or business with a trade name,

both the firm and the licensee shall notify the Board within 30 days.

(d) A person who has a license which has been expired less than three years may be added to an active license issued in the name of a corporation, partnership or business with a trade name, upon written request, completion of forms provided by the Board and payment of the fee set forth in Rule .1102 of this Chapter.

(e) The license number assigned to a corporation, partnership, or business with a trade name shall be that of the first licensee listed on the license.

(f) A corporation, partnership or business with a trade name which is issued a license is subject to the provisions of G.S. 87, Article 2 and to the rules in this Chapter.

History Note: Authority G.S. 87-18; 87-22; 87-26; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. December 31, 2011; November 1, 1994; November 1, 1993; July 1, 1991; May 1, 1989.

21 NCAC 50 .0412 GUIDELINES ON DISCIPLINARY ACTIONS

(a) The provisions of G.S. 87, Article 2, the rules of the Board and the matters referenced therein are the guidelines by which the conduct of an entity subject to the authority of the Board are evaluated.

(b) The Board may suspend a license or impose probation provisions for violations of 21 NCAC 50 .0402, 21 NCAC 50 .0403, 21 NCAC 50 .0404 and 21 NCAC 50 .0405. Repeated violations may result in revocation.

(c) The Board may suspend a license or impose probationary terms when a licensee fails to comply with the supervision requirements of 21 NCAC 50 .0404, 21 NCAC 50 .0406 or 21 NCAC 50 .0505. Multiple violations within the same proceeding may result in revocation.

(d) The Board may suspend or revoke a license where it is found that the licensee has failed to comply with the minimum standards of competence as set forth in 21 NCAC 50 .0505(b). The Board may condition the subsequent reinstatement of license upon passing of the Board's examination or completion of specified educational courses. The Board may impose additional conditions of reinstatement.

(e) The Board may suspend or revoke the license of a contractor where it is found that the contractor abandoned a job after obtaining funds from the owner.

(f) The Board may revoke the license of any licensee where it is found that the licensee through a violation of G.S. 87, Article 2, has increased the risk of:

- (1) exposure to carbon monoxide or other harmful vapors,
- (2) fire, or damage resulting therefrom,
- (3) the release of sewage or methane gas, or
- (4) contamination of the potable water supply.

(g) This Rule is not intended to limit the authority of the Board or the variety of facts for which action is required in a particular situation.

(h) Any of the foregoing actions may result in a probation period or combination of suspension and probation. Condition of probation may include remediation, education, reexamination,

record-keeping or other provisions likely to deter future violation or remedy perceived shortcomings.

History Note: Authority G.S. 87-18; 87-23; Eff. November 1, 1993; Amended Eff. December 31, 2011; August 1, 2000; November 1, 1994; August 1, 1994.

21 NCAC 50 .0512 EMPLOYEES EXEMPTED FROM LICENSURE

(a) An unlicensed person who is directly and regularly employed in the ordinary course of business by a contractor licensed pursuant to G.S. 87, Article 2 is not required to have a license and shall not be subject to an action for injunctive relief brought by the Board. Factors establishing whether the individual is directly and regularly employed in the ordinary course of business of such contractor include the following:

- (1) whether the individual is on the licensed contractor's payroll;
- (2) whether taxes are withheld from the payment to the individual and the contractor performs such other acts as are lawfully required of an employer;
- (3) whether the licensed contractor exercises control and supervision over the method, manner and details of the individual's work; and
- (4) whether the licensed contractor, and not the unlicensed person, is and remains obligated to the property owner or general contractor for the work.

(b) Persons acting as independent contractors, consultants or subcontractors, or paid as such, are not bona fide employees.

(c) Licensed contractors may utilize employees shared with a labor supplier under a written contract which may allocate payroll or tax withholding obligations to the labor supplier while reserving control, supervision and obligation to the owner or general contractor to the licensee of the Board, and provided the licensee upon whose qualifications the license of the employing contractor is based remains a person meeting all four of the indicia of employment set out in Paragraph (a) of this Rule and is not contracted by or acting as a labor supplier.

History Note: Authority G.S. 87-18; 87-25; Eff. August 1, 2000; Amended Eff. December 31, 2011; May 1, 2006.

21 NCAC 50 .0517 PLUMBING, HEATING AND FUEL PIPING TECHNICIAN LICENSE

(a) The holder of license as a Heating, Group 1 Technician shall be a full-time employee of a Heating, Group No. 1 Contractor.

(b) The holder of license as a Heating, Group 2 Technician shall be a full-time employee of a Heating, Group No. 2 Contractor.

(c) The holder of license as a Heating, Group 3 Technician shall be a full-time employee of a Heating, Group No. 3 Contractor.

(d) The holder of license as a Plumbing Technician shall be a full-time employee of a Plumbing Contractor.

(e) The holder of license as a Fuel Piping Technician shall be a full-time employee of a Fuel Piping Contractor licensee or a Class A Gas Dealer pursuant to 21 NCAC 50 .0404(c).

*History Note: Authority G.S. 87-18;87-21(b);
Eff. December 31, 2011.*

21 NCAC 50 .1002 REQUEST FOR HEARING

- (a) Any time an aggrieved party believes that individual's rights, duties, or privileges have been affected by the Board's administrative action, but has not received notice of a right to an administrative hearing, that individual may file a request for a hearing.
- (b) Before an individual may file a request, that individual shall exhaust all reasonable efforts to resolve the issue informally with the Board.
- (c) Subsequent to such informal action, if still dissatisfied, the individual shall submit a request to the Board's office, with the request bearing the notation: **REQUEST FOR ADMINISTRATIVE HEARING**. The request shall contain the following information:
 - (1) name and address of the petitioner,
 - (2) a statement of the action taken by the Board which is challenged,
 - (3) a statement of the way in which the petitioner has been aggrieved, and
 - (4) a statement of request for a hearing.
- (d) The Board shall acknowledge the request and take action consistent with 21 NCAC 50 .1003.

*History Note: Authority G.S. 87-18; 150B-22; 150B-38;
Eff. May 1, 1989;
Amended Eff. December 31, 2011.*

21 NCAC 50 .1004 NOTICE OF HEARING

- (a) Hearings of the Board are commenced and conducted consistent with G.S. 150B, Article 3A.
- (b) If the Board determines that the public health, safety or welfare requires such action, it shall issue an order summarily suspending a license. Upon service of the order, the licensee to whom the order is directed shall immediately cease the practice of plumbing, heating or fire sprinkler contracting in North Carolina. The Board shall give notice of hearing pursuant to G.S. 150B, Article 3A following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

*History Note: Authority G.S. 87-18; 150B-3(c); 150B-38;
Eff. May 1, 1989;
Amended Eff. December 31, 2011; August 1, 2000; April 1, 1991.*

21 NCAC 50 .1005 WHO SHALL HEAR CONTESTED CASES

All administrative hearings will be conducted by the Board or a panel consisting of a majority of the members of the Board.

*History Note: Authority G.S. 87-18; 150B-11; 150B-38;
150B-40;
Eff. May 1, 1989;
Amended Eff. December 31, 2011.*

21 NCAC 50 .1102 LICENSE FEES

- (a) Except as set out in this Rule, the annual license fee for plumbing, heating and fuel piping contractor licenses by this Board is one hundred thirty dollars (\$130.00).
- (b) The annual license fee for a licensed individual who holds qualifications from the Code Officials Qualification Board, is employed full-time as a local government plumbing, heating or mechanical inspector and who is not actively employed or engaged in business requiring license from this Board is twenty-five dollars (\$25.00).
- (c) The initial application fee for license without examination conducted by the Board is thirty dollars (\$30.00).
- (d) The annual license fee for a contractor or fire sprinkler inspection technician whose qualifications are listed as the second or subsequent individual on the license of a corporation, partnership, or business with a trade name under Paragraphs (a) or (c) of this Rule is thirty dollars (\$30.00).
- (e) The annual license fee for fire sprinkler installation contractor and fire sprinkler inspection contractor licenses by this Board is one hundred thirty dollars (\$130.00).
- (f) The annual license fee for Fire Sprinkler Maintenance Technician is one hundred thirty dollars (\$130.00).
- (g) The annual license fee for Residential Fire Sprinkler Installation Contractor is one hundred thirty dollars (\$130.00).
- (h) The annual license fee for Fire Sprinkler Inspection Technician is one hundred thirty dollars (\$130.00).
- (i) The annual license fee for all Fuel Piping Technician license listed with a Class A Gas Dealer is one hundred thirty dollars (\$130.00).
- (j) The annual license fee for Plumbing, Heating or Fuel Piping Technician licensees listed under a licensed Plumbing, Heating or Fuel Piping Contractor is sixty five dollars (\$65.00).

*History Note: Authority G.S. 87-18; 87-21; 87-22;
Eff. May 1, 1989;
Temporary Amendment Eff. November 17, 1989 for a period of 77 days to expire on February 1, 1990;
Amended Eff. November 1, 1994; July 1, 1991; March 1, 1990;
Temporary Amendment Eff. August 31, 2001; September 15, 1997;
Amended Eff. July 1, 2010; March 1, 2005; December 1, 2003;
December 4, 2002;
Amended Eff. Pending Legislative Review.*

21 NCAC 50 .1105 ANNUAL REPORTS

The Board shall file all reports required by G.S. 93B-2 as well as the audit required by G.S. 93B-4. In case of untimely filing of a report required by G.S. 93B-2, the Board shall hold in escrow any fees collected between the filing deadline and the filing date. Issuance of licenses, renewals and application processing shall continue during any interval created by the untimely filing of a report required by G.S. 93B-2.

*History Note: Authority G.S. 93B-2;
Eff. December 31, 2011.*

21 NCAC 50 .1402 EXEMPTIONS AND CREDITS

21 NCAC 50 .1403 COMPUTATION OF CONTINUING EDUCATION HOURS
21 NCAC 50 .1404 COURSE REQUIREMENTS AND LIMITATIONS
21 NCAC 50 .1405 APPROVAL OF COURSES

History Note: Authority G.S. 87-2; 87-21(b)(3); 87-22; Eff. April 1, 2001; Amended Eff. January 1, 2010; June 1, 2006; May 1, 2006; April 1, 2003; Repealed Eff. Pending Legislative Review.

21 NCAC 50 .1407 CERTIFICATION OF COURSE COMPLETION BY LICENSEES AND PROVIDERS
21 NCAC 50 .1408 ADVERTISEMENTS BY COURSE PROVIDERS OR INSTRUCTORS
21 NCAC 50 .1409 TERMINATION OF COURSE OR PROVIDER APPROVAL
21 NCAC 50 .1410 PETITIONS FOR REINSTATEMENT OF LICENSE

History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001; Amended Eff. April 1, 2003; March 15, 2003; Repealed Eff. Pending Legislative Review.

CHAPTER 54 - NORTH CAROLINA PSYCHOLOGY BOARD

21 NCAC 54 .1605 FEES

In addition to fees specified in G.S. 90, Article 18A, the following charges shall be assessed for the indicated services:

- (1) eight dollars (\$8.00) - register of licensed psychologists;
(2) two hundred fifty dollars (\$250.00) - renewal of license;
(3) the cost of the examination set by the vendor plus fifty dollars (\$50.00) - national written examination;
(4) two hundred dollars (\$200.00) - state examination;
(5) costs for copies of public records as follows:
(a) "actual costs" as defined in G.S. 132-6.2(b) and provided on the Board's website;
(b) mailing costs if applicable; and
(c) no charge if 10 pages or less;
(6) one hundred dollars (\$100.00) - application fee;
(7) one hundred dollars (\$100.00) - reinstatement fee;
(8) twenty dollars (\$20.00) - returned check;
(9) ten dollars (\$10.00) - each written license verification, whether submitted individually or on a list;
(10) costs of disciplinary action as follows:

- (a) three hundred dollars (\$300.00) - consent order; and
(b) three hundred dollars (\$300.00) per hour for a hearing which results in disciplinary action, with a minimum charge of three hundred dollars (\$300.00) for the first hour or portion thereof, and then prorated thereafter for each half-hour;
(11) fifty dollars (\$50.00) - registration fee for certificate of registration for professional corporation or limited liability company; and
(12) twenty-five dollars (\$25.00) - renewal fee for certification of registration for professional corporation or limited liability company.

History Note: Authority G.S. 12-3.1(c); 55B-10; 55B-11; 90-270.9; 90-270.15(c); 90-270.18(b)(c); 132-6.2(b); Legislative Objection Lodged Eff. August 26, 1982; Eff. September 1, 1982; Curative Amended Eff. September 28, 1982; Temporary Amendment Eff. October 1, 1989 For a Period of 180 Days to Expire on April 1, 1990; Temporary Amendment Eff. October 1, 1990 For a Period of 180 Days to Expire on April 1, 1991; Amended Eff. January 1, 1991; Temporary Amendment Eff. September 1, 1993, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner. Amended Eff. December 1, 2011; July 1, 1996; April 1, 1994; December 1, 1993.

CHAPTER 58 - REAL ESTATE COMMISSION

21 NCAC 58A .0107 HANDLING AND ACCOUNTING OF FUNDS

(a) Except as provided in this Rule, all monies received by a licensee acting in his or her fiduciary capacity shall be deposited in a trust or escrow account maintained by a broker not later than three banking days following receipt of such monies except that earnest money deposits paid by means other than currency which are received on offers to purchase real estate and tenant security deposits paid by means other than currency which are received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a provisional broker shall be delivered upon receipt to the broker by whom he or she is employed, except that all monies received by nonresident commercial licensees shall be delivered as required by Rule .1808 of this Subchapter. A licensee may accept custody of a check or other negotiable instrument made payable to the seller of real property as payment for option money or option fee in connection with an option contract or for a fee to the seller for a buyer's right to inspect property or determine its suitability for the buyer's needs prior to the closing

of a sales transaction, but only for the purpose of delivering the instrument to the seller. While the instrument is in the custody of the licensee, the licensee shall, according to the instructions of the buyer, either deliver it to the seller or return it to the buyer. The licensee shall safeguard the instrument and shall be responsible to the parties on the instrument for its safe delivery as required by this Rule. A licensee shall not retain such an instrument for more than three business days after the acceptance of the option or other sales contract.

(b) If monies received by a licensee while acting in a fiduciary capacity are deposited in a trust or escrow account which bears interest, the licensee having custody over such monies shall first secure from all parties having an interest in the monies written authorization for the deposit of the monies in an interest-bearing account. Such authorization shall specify how and to whom the interest will be disbursed, and, if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a conspicuous manner which shall distinguish it from other provisions of the instrument.

(c) Closing statements shall be furnished to the buyer and the seller in the transaction not more than five days after closing.

(d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account as well as the monthly bank statement for the account shall bear the words "Trust Account" or "Escrow Account."

(e) A licensee shall maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit of such funds in a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account. The required records shall include:

- (1) bank statements;
- (2) canceled checks and other evidence or memoranda of payments from the account, whether by transfer between accounts, wire payments, or payments by electronic means, which shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledger sheets or for rental transactions, the corresponding property or owner ledger sheets. Checks and other evidence or memoranda of payments from the account shall identify the payee by name and shall bear a notation identifying the purpose of the disbursement. When a payment is used to disburse funds for more than one sales transaction, owner, or property, the check or other evidence or memoranda of payment shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet which shall be cross-referenced to the corresponding check or payment. In lieu of

retaining canceled checks, a licensee may retain digitally imaged copies of the canceled checks or substitute checks provided that such images are legible reproductions of the front and back of such instruments with no smaller images than 1.1875 x 3.0 inches and provided that the licensee's bank retains for a period of at least six years the original checks, "substitute checks" as described in 12 C.F.R. 229.51 or the capacity to provide substitute checks as described in 12 C.F. R. 229.51, and makes the original or substitute checks available to the licensee and the Commission upon request;

- (3) deposit tickets or other evidence or memoranda of deposits or payments into the account, whether by transfer between accounts, wire payments, or payments by electronic means. For a sales transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger entry. For a rental transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger entry. For deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment. When a single deposit ticket or payment is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information shall be recorded on the ticket or other evidence or memoranda of deposits or payments into the account for each sales transaction, owner, or property, or it may refer to the same information recorded on a supplemental deposit worksheet which shall be cross-referenced to the corresponding deposit ticket;
- (4) a payment record sheet for each property or interest for which funds are collected and deposited into a property owner association trust account as required by Paragraph (i) of this Rule. Payment record sheets shall identify the amount, date, remitter, and purpose of payments received, the amount and nature of the obligation for which payments are made,

- and the amount of any balance due or delinquency;
- (5) a separate ledger sheet for each sales transaction and for each property or owner of property managed by the licensee identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular sales transaction or, in a rental transaction, the particular property or owner of property. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the licensee. For each security deposit the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property. For each disbursement of tenant security deposit monies, the ledger shall identify the check number, amount, payee, date, and purpose of the disbursement. The ledger shall also show a running balance. When tenant security deposit monies are accounted for on a separate ledger as provided in this Rule, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries;
 - (6) a journal or check stubs identifying in chronological sequence each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and a reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account;
 - (7) copies of contracts, leases and management agreements;
 - (8) closing statements and property management statements;
 - (9) covenants, bylaws, minutes, management agreements and periodic statements relating to the management of a property owner association; and
 - (10) invoices, bills, and contracts paid from the trust account, and any documents not otherwise described in this Rule necessary and sufficient to verify and explain record entries.

Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create an audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets. Ledger sheets and

journals or check stubs must be reconciled to the trust or escrow account bank statements on a monthly basis. Records of trust or escrow monies must include a worksheet for each such monthly reconciliation showing the ledger sheets, journals or check stubs, and bank statements to be in agreement and balance.

(f) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 21 NCAC 58A .0108.

(g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a licensee, the licensee shall retain the deposit in a trust or escrow account until the licensee has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, the licensee may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of G.S. 93A-12. If it appears to a licensee holding a disputed deposit that a party has abandoned his or her claim, the licensee may disburse the money to the other claiming parties according to their written agreement provided that the licensee first makes a reasonable effort to notify the party who has apparently abandoned his or her claim and provides that party with an opportunity to renew his or her claim to the disputed funds. Tenant security deposit monies shall be disposed of in accordance with the requirements of G.S. 42-50 through 56 and G.S. 42A-18.

(h) A licensee may transfer earnest money deposits in his or her possession collected in connection with a sales transaction from his or her trust account to the closing attorney or other settlement agent not more than ten days prior to the anticipated settlement date. A licensee shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

(i) The funds of a property owner association, when collected, maintained, disbursed or otherwise controlled by a licensee, are trust monies and shall be treated as such in the manner required by this Rule. Such funds must be deposited into and maintained in a trust or escrow account dedicated exclusively for funds belonging to a single property owners association and may not be commingled with funds belonging to other property owner associations or other persons or parties. A licensee who undertakes to act as manager of a property owner association or as the custodian of funds belonging to a property owner association shall provide the association with periodic statements which report the balance of association funds in the licensee's possession or control and which account for the funds the licensee has received and disbursed on behalf of the association. Such statements must be made in accordance with the licensee's agreement with the association, but not less frequently than every 90 days.

(j) Every licensee shall safeguard the money or property of others coming into his or her possession in a manner consistent with the requirements of the Real Estate License Law and the rules adopted by the Commission. A licensee shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.

(k) In addition to the records required by Paragraph (e) of this Rule, a licensee acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain a subsidiary ledger sheet for each property or owner of such properties onto which all funds collected and disbursed are identified in categories by purpose. On a monthly basis, the licensee shall reconcile the subsidiary ledger sheets to the corresponding property or property owner ledger sheet.

(l) In lieu of maintaining a subsidiary ledger sheet, the licensee may maintain an accounts payable ledger sheet for each owner or property and each vendor to whom trust monies are due for monies collected on behalf of the owner or property identifying the date of receipt of the trust monies, from whom the monies were received, rental dates, and the corresponding property or owner ledger sheet entry including the amount to be disbursed for each and the purpose of the disbursement. The licensee may also maintain an accounts payable ledger sheet in the format described in Paragraph (k) of this Rule for vacation rental tenant security deposit monies and vacation rental advance payments.

History Note: Authority G.S. 93A-3(c); 93A-9;

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. January 1, 2012; April 1, 2006; July 1, 2005; July 1, 2004; July 1, 2003; September 1, 2002; August 1, 2000; August 1, 1998; July 1, 1996; July 1, 1993; May 1, 1990.

21 NCAC 58A .0114 RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT

(a) Every owner of real property subject to a transfer of the type contemplated by Chapter 47E of the General Statutes shall complete the following Residential Property and Owners' Association Disclosure Statement and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:

[N.C. REAL ESTATE COMMISSION SEAL]

**STATE OF NORTH CAROLINA
RESIDENTIAL PROPERTY AND OWNER'S ASSOCIATION DISCLOSURE STATEMENT**

Instructions to Property Owners

1. G.S. 47E requires owners of residential real estate (single-family homes, individual condominiums, townhouses, and the like, and buildings with up to four dwelling units) to furnish purchasers a Residential Property and Owners' Association Disclosure Statement ("Disclosure Statement"). This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase (unless the tenant is already occupying or intends to occupy the dwelling). A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
2. You must respond to each of the questions on the following pages of this form by filling in the requested information or by placing a check in the appropriate box.
 - a. If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No", you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
 - c. If you check "No Representation", you have no duty to disclose the conditions or characteristics of the property, even if you should have known of them.
- * If you check "Yes" or "No" and something happens to the property to make your Disclosure Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Disclosure Statement or correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Statement to the purchasers; and the broker must disclose any material facts about your property which they know or reasonably should know, regardless of your responses on the Statement.

4. You must give the completed Disclosure Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "**Note to Purchasers**" below). You should give the purchaser a copy of the Disclosure Statement containing your signature and keep a copy signed by the purchaser for your records.

Note to Purchasers

If the owner does not give you a Residential Property Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: _____
 Owner's Name(s): _____
Owner(s) acknowledge having examined this Disclosure Statement before signing and that all information is true and correct as of the date signed.

Owner Signature: _____ Date _____, ____
 Owner Signature: _____ Date _____, ____
Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that they have examined it before signing; that they understand that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain their own inspection from a licensed home inspector or other professional.

Purchaser Signature: _____ Date _____, ____
 Purchaser Signature: _____ Date _____, ____

Property Address/Description: _____

Regarding the property identified above, including the dwelling unit(s) and lot to be conveyed, and not sheds, detached garages or other buildings, to your knowledge is there any problem (malfunction or defect) with any of the following:

- | | Yes* | No | Repre-
sentation |
|---|--------------------------|--------------------------|--------------------------|
| 1. FOUNDATION, SLAB, FIREPLACES/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILINGS, INTERIOR AND EXTERIOR WALLS, ATTACHED GARAGE, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS including any modifications to them? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Siding is: <input type="checkbox"/> Masonry <input type="checkbox"/> Wood <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco
<input type="checkbox"/> Other _____ | | | <input type="checkbox"/> |
| b. Approximate age of structure? _____ | | | <input type="checkbox"/> |
| 2. ROOF (leakage or other problem)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

APPROVED RULES

- a. Approximate age of roof covering? _____
3. WATER SEEPAGE, LEAKAGE, DAMPNES OR STANDING WATER in the basement, crawl space or slab?
4. ELECTRICAL SYSTEM (outlets, wiring, panel, switches, fixtures etc.)?
5. PLUMBING SYSTEM (pipes, fixtures, water heater, etc.)?
6. HEATING AND/OR AIR CONDITIONING?
- a. Heat Source is: Furnace Heat Pump Baseboard Other _____
- b. Cooling Source is: Central Forced Air Wall/Window Unit(s)
 Other _____
- c. Fuel Source is: Electricity Natural Gas Propane Oil Other _____
7. WATER SUPPLY (including water quality, quantity and water pressure)?
- a. Water supply is: City/County Community System Private Well
 Other _____
- b. Water pipes are: Copper Galvanized Plastic Other _____
 Unknown
8. SEWER AND/OR SEPTIC SYSTEM?
- a. Sewage disposal system is: Septic Tank Septic Tank with Pump
 Community System Connected to City/County System
 City/County System available Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates state law])
 Other _____
9. BUILT-IN APPLIANCES (RANGE/OVEN, ATTACHED MICROWAVE, HOOD/FAN, DISHWASHER, DISPOSAL, etc.)?
10. PRESENT INFESTATION, OR DAMAGE FROM PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS which has not been repaired?
11. DRAINAGE, GRADING OR SOIL STABILITY OF LOT?
12. OTHER SYSTEMS AND FIXTURES: CENTRAL VACUUM, POOL, HOT TUB, SPA, ATTIC FAN, EXHAUST FAN, CEILING FAN, SUMP PUMP, IRRIGATION SYSTEM, TV CABLE WIRING OR SATELLITE DISH, OR OTHER SYSTEMS?
- Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you have any**
13. ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES ?
14. ENVIRONMENTAL HAZARDS (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?
15. COMMERCIAL, INDUSTRIAL, OR MILITARY NOISE, ODOR, SMOKE, ETC. AFFECTING THE PROPERTY?

APPROVED RULES

16. VIOLATIONS OF ZONING ORDINANCES, RESTRICTIVE COVENANTS OR OTHER LAND-USE RESTRICTIONS, OR BUILDING CODES INCLUDING THE FAILURE TO OBTAIN PROPER PERMITS FOR ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES(S)?
17. UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS OR ENCROACHMENTS FROM OR ON ADJACENT PROPERTY?
18. LAWSUITS, FORECLOSURES, BANKRUPTCY, TENANCIES, JUDGMENTS, TAX LIENS, PROPOSED ASSESSMENTS, MECHANICS' LIENS, MATERIALMENS' LIENS, OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title to the property?
19. FLOOD HAZARD or that the property is in a FEDERALLY-DESIGNATED FLOOD PLAIN?
20. PRIVATE ROAD(S) OR STREETS adjoining the property?
- a. If yes, do you know of an existing owners' association or maintenance agreement to maintain the road or street?

* If you answered "Yes" to any of the above questions, please explain (Attach additional sheets, if necessary): _____

In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public agency, engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.

Also regarding the property identified above, including the dwelling unit(s), any sheds, detached garages, other buildings or the lot to be conveyed, answer each of the questions below based on your actual knowledge:

- | | Yes* | No | No Representation |
|--|--------------------------|--------------------------|--------------------------|
| 21. Is the property subject to regulation by one or more owners' association(s) and governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot, including, but not limited to obligations to pay regular assessments or dues and special assessments? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

*If you answered "No" or "No Representations" to question 21 above, you do not need to answer the remaining questions on this Disclosure Statement. If you answered "Yes" to question 21 above, you must complete the remainder of this Disclosure Statement.

22. The property is subject to the following owners' association(s) [insert N/A into any blank that does not apply]:
(specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address, and telephone number of the president of the owners' association or the _____ association _____ manager are: _____

(specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address, and telephone number of the president of the owners' association or the association manager are: _____

23. As of the date this Disclosure Statement is signed, there are no other dues, fees, or special assessments which have been duly approved as required by the applicable declaration or bylaws, payable to an association to which the lot is subject, except: _____

24. As of the date this Disclosure Statement is signed, there are no unsatisfied judgments against or pending lawsuits involving the property or lot to be conveyed, the planned community or the association to which the property and lot are subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the property and lot to be conveyed, except: _____

25. The following services and amenities are paid for by the above owners' association(s) from the regular assessments ("dues"): (Check all that apply).

	Yes*	No	No Repr- sentation
Management Fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior Building Maintenance of Property to be Conveyed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior Yard/Landscaping Maintenance of Lot to be Conveyed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Common Areas Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trash Removal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recreational Amenity Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pest Treatment/Extermination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Street Lights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stormwater Management/Drainage/Ponds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internet Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private Road Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parking Area Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gate and/or Security	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify) _____			

(b) The form described in Paragraph (a) of this Rule may be reproduced, but the form shall not be altered or amended in any way.

History Note: Authority G.S. 47E-4(b); 93A-3(c); 93A-6; Eff. October 1, 1998;

Amended Eff. January 1, 2012; July 1, 2010; July 1, 2009; January 1, 2008; July 1, 2006; September 1, 2002; July 1, 2000.

21 NCAC 58A .0402 EXAMINATION SUBJECT MATTER, FORMAT, AND PASSING SCORES

(a) The real estate licensing examination shall test applicants on the following general subject areas:

- (1) real estate law;
- (2) real estate brokerage law and practices;
- (3) the Real Estate License Law, rules of the Commission, and the Commission's trust account guidelines;
- (4) real estate finance;
- (5) real estate valuation (appraisal);
- (6) real estate mathematics; and
- (7) related subject areas.

(b) The real estate licensing examination shall consist of two sections, a "national" section on general real estate law, principles and practices and a "state" section on North Carolina real estate law, principles and practices. Unless the "national" section is waived by the Commission for an applicant based on its authority under G.S. 93A-9, an applicant must pass both sections of the examination in order to pass the examination. In order to pass the real estate licensing examination, an applicant must attain a score for each required section of the examination that is at least equal to the passing score established by the

Commission for each section of the examination in compliance with psychometric standards for establishing passing scores for occupational licensing examinations as set forth in the "Standards for Educational and Psychological Testing" jointly promulgated by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. An applicant who passes one or both sections of the examination will receive only a score of "pass" for the section(s) passed; however, an applicant who fails one or both sections of the examination shall be informed of their actual score for the section(s) failed. An applicant who is required to pass both sections of the examination must do so within his or her 180-day examination eligibility period, and if the applicant passes only one section during his or her 180-day examination eligibility period, then that passing score shall not be recognized if the applicant subsequently re-applies to the Commission for a license. A passing examination score obtained by a license applicant for both sections of the examination, or for the "state" section if that is the only section an applicant is required to pass, shall be recognized as valid for a period of one year from the date the examination was passed, during which time the applicant must satisfy any remaining requirements for licensure that were

pending at the time of examination; provided that the running of the one-year period shall be tolled upon mailing the applicant the letter contemplated in 21 NCAC 58A .0616(b) informing the applicant that his or her moral character is in question, and shall resume running when the applicant's application is either approved for license issuance, denied or withdrawn. The application of an applicant with a passing examination score who fails to satisfy all remaining requirements for licensure within one year shall be canceled and the applicant shall be required to reapply and satisfy all requirements for licensure, including retaking and passing the license examination, in order to be eligible for licensure.

History Note: Authority G.S. 93A-3(c); 93A-4(b),(d); Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. January 1, 2012; April 1, 2006; July 1, 2000; July 1, 1996; July 1, 1989; December 1, 1985; May 1, 1982; April 11, 1980.

21 NCAC 58A .0403 RE-APPLYING FOR EXAMINATION

- (a) An individual whose license application has been canceled pursuant to Rule .0302(c) of this Subchapter and whose 180 day examination eligibility period has expired who wishes to be rescheduled for the real estate license examination must re-apply to the Commission by filing a complete license application as described in Rule .0301 of this Subchapter and paying the prescribed application fee. Subsequent examinations shall then be scheduled in accordance with Rule .0401 of this Section.
- (b) An individual whose license application has been canceled pursuant to Rule .0302(c) of this Subchapter who wishes to be rescheduled for the license examination before the expiration of his or her 180 day examination eligibility period may utilize an abbreviated electronic license application and examination rescheduling procedure by directly contacting the Commission's authorized testing service, paying both the license application fee and the examination fee to the testing service, and following the testing service's established procedures.
- (c) An applicant who fails one or both sections of the license examination shall not be allowed to retake the failed section(s) of the examination for at least 10 calendar days.

History Note: Authority G.S. 93A-4(b),(d); Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. February 1, 1988; December 1, 1985; April 11, 1980;
Temporary Amendment Eff. April 24, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. January 1, 2012; April 1, 2004; October 1, 2000; August 1, 1995.

21 NCAC 58A .0405 CONFIDENTIALITY OF EXAMINATIONS

Licensing examinations are confidential. No applicant or licensee shall obtain, attempt to obtain, receive, or communicate to other persons examination questions or answers. Violation of

this Rule is grounds for denial of a real estate license if the violator is an applicant and disciplinary action if the violator is a licensee or becomes a licensee prior to the discovery of the violation by the Commission.

History Note: Authority G.S. 93A-3(c); 93A-4(d); 93A-6; Eff. December 1, 1985;
Amended Eff. January 1, 2012; July 1, 2009.

21 NCAC 58A .0406 EXAMINATION REVIEW

History Note: Authority G.S. 93A-4(d); Eff. December 1, 1985;
Amended Eff. April 1, 2006; October 1, 2000; July 1, 1989; February 1, 1989;
Repealed Eff. January 1, 2012.

21 NCAC 58A .0504 ACTIVE AND INACTIVE LICENSE STATUS

- (a) Except for licenses that have expired or that have been revoked, suspended or surrendered, all licenses issued by the Commission shall be designated as being either on active status or inactive status. The holder of a license on active status may engage in any activity requiring a real estate license and may be compensated for the provision of any lawful real estate brokerage service. The holder of a license on inactive status may not engage in any activity requiring a real estate license, including the referral for compensation of a prospective seller, buyer, landlord or tenant to another real estate licensee or any other party. A licensee holding a license on inactive status must renew such license and pay the prescribed license renewal fee in order to continue to hold such license. The Commission may take disciplinary action against a licensee holding a license on inactive status for any violation of G.S. 93A or any rule promulgated by the Commission, including the offense of engaging in an activity for which a license is required while a license is on inactive status.
- (b) A license issued to a provisional broker shall, upon initial licensure, be assigned to inactive status. A license issued to a firm or a broker other than a provisional broker shall be assigned to active status. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker may change the status of his or her license from active to inactive status by submitting a written request to the Commission. A provisional broker's license shall be assigned by the Commission to inactive status when the provisional broker is not under the active, direct supervision of a broker-in-charge. A firm's license shall be assigned by the Commission to inactive status when the firm does not have a qualifying broker with an active license. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker shall also be assigned to inactive status if, upon the second renewal of his or her license following initial licensure, or upon any subsequent renewal, he or she has not satisfied the continuing education requirement described in Rule .1702 of this Subchapter.
- (c) A provisional broker with an inactive license who desires to have such license placed on active status must comply with the procedures prescribed in Rule .0506 of this Section.

(d) A broker, other than a provisional broker, with an inactive license who desires to have such license placed on active status shall file with the Commission a request for license activation on a form provided by the Commission containing identifying information about the broker, a statement that the broker has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signature of the broker. Upon the mailing or delivery of this form, the broker may engage in real estate brokerage activities requiring a license; however, if the broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the broker shall immediately terminate his or her real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the broker is notified that he or she is not eligible for license activation due to a continuing education deficiency, the broker must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(e) A firm with an inactive license which desires to have its license placed on active status shall file with the Commission a request for license activation on a form provided by the Commission containing identifying information about the firm and its qualifying broker. If the qualifying broker has an inactive license, he or she must satisfy the requirements of Paragraph (d) of this Rule. Upon the mailing or delivery of the completed form by the qualifying broker, the firm may engage in real estate brokerage activities requiring a license; however, if the firm's qualifying broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the firm shall immediately terminate its real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the qualifying broker is notified that the firm is not eligible for license activation due to a continuing education deficiency on the part of the qualifying broker, the firm must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(f) A person licensed as a broker under Section .1800 of this Subchapter shall maintain his or her license on active status at all times as required by Rule .1804 of this Subchapter.

History Note: Authority G.S. 93A-3(c); 93A-4(d); 93A-4.1; 93A-6; 93A-9;

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. January 1, 2012; July 1, 2009; April 1, 2006; July 1, 2005; July 1, 2004; October 1, 2000; April 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; February 1, 1989; December 1, 1985.

21 NCAC 58A .0505 REINSTATEMENT OF EXPIRED LICENSE, REVOKED, SURRENDERED OR SUSPENDED LICENSE

(a) Licenses expired for not more than six months may be reinstated upon the submission of payment of a fifty-five dollar (\$55.00) reinstatement fee. In order to reinstate the license on

active status, the person requesting reinstatement shall have obtained the continuing education as is required by Rule .1703 of this Subchapter to change an inactive license to active status. A person reinstating a license on inactive status is not required to have obtained any continuing education in order to reinstate the license; however, in order to subsequently change his or her reinstated license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 of this Subchapter, and be supervised by a broker-in-charge in compliance with the requirements of Rule .0506 of this Section.

(b) Reinstatement of licenses expired for more than six months shall be considered upon the submission of a complete and accurate application and payment of a fifty-five dollar (\$55.00) reinstatement fee. Applicants must satisfy the Commission that they possess the current knowledge, skills and competence, as well as the truthfulness, honesty and integrity, necessary to function in the real estate business in a manner that protects and serves the public interest. To demonstrate knowledge, skills and competence, the Commission may require the applicants to complete real estate education or pass the license examination or both.

(c) Reinstatement of a revoked license shall be considered upon the submission of a complete and accurate application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than six months.

(d) Reinstatement of a license surrendered under the provisions of G.S. 93A-6(e) shall be considered upon termination of the period of surrender specified in the order approving the surrender and upon the submission of a complete and accurate application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than six months.

(e) When a license is suspended by the Commission, the suspended license shall be restored at the end of the period of active suspension provided that any applicable license renewal fees that accrued during the time of the suspension are paid by the licensee within 60 days from the end of the period of license suspension. In order for the license to be restored on active status, the licensee shall demonstrate that the licensee has satisfied the continuing education requirement for license activation prescribed by Rule .1703 of this Subchapter and that the licensee is supervised by a broker-in-charge in compliance with the requirements of Rule .0506 of this Section, if applicable. Failure to pay the accrued license renewal fees within the time set forth in this Paragraph shall result in expiration of the license effective the last day of the suspension period. A former licensee whose license expires under this Paragraph and who thereafter seeks reinstatement must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than six months.

(f) Whenever a license is reinstated by the Commission following expiration for more than six months, revocation, or voluntary surrender, the date of licensure for the licensee shall

be the date of reinstatement and not the date of original licensure.

History Note: Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4.1;
 Eff. February 1, 1976;
 Readopted Eff. September 30, 1977;
 Temporary Amendment Eff. April 24, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Amended Eff. January 1, 2012; July 1, 2009; January 1, 2008; April 1, 2004; July 1, 2000; August 1, 1998; July 1, 1996; August 1, 1995; July 1, 1995.

21 NCAC 58A .0511 LICENSING OF PERSONS LICENSED IN ANOTHER JURISDICTION

(a) The Commission shall fully exempt from its license examination requirement and issue broker licenses by reciprocity to applicants who have otherwise satisfied the requirements of G.S. 93A-4 and who are residents of and hold active licenses in the following jurisdictions:

- (1) Arkansas,
- (2) Connecticut,
- (3) Georgia,
- (4) Iowa,
- (5) Louisiana,
- (6) Mississippi,
- (7) Nebraska,
- (8) South Carolina,
- (9) Tennessee, and
- (10) West Virginia.

The Commission shall discontinue broker licensing by reciprocity effective February 29, 2012. On and after March 1, 2012, licensees who were licensed in North Carolina by reciprocity shall be entitled to retain such license indefinitely, unless suspended, revoked or surrendered pursuant to G.S. 93A-6, so long as the license is continuously renewed or is reinstated within six months of expiration. A person who was previously licensed in North Carolina by reciprocity and who seeks reinstatement of that license after the license has been expired for more than six months, suspended, revoked or surrendered shall satisfy the requirements described in Rule .0505 of this Subchapter.

(b) Effective March 1, 2012, persons applying for a North Carolina broker license who hold a current real estate license that has been on active status within the previous three years in another state of the United States, a United States territory or possession of a Canadian jurisdiction shall meet the licensing requirements prescribed in G.S. 93A-4 except that such persons shall be exempt from the "national" section of the North Carolina real estate license examination, but shall pass the "state" section of that examination.

History Note: Authority G.S. 93A-3(c); 93A-4(b),(c),(d); 93A-4.1; 93A-9(a).
 Eff. January 1, 2012.

21 NCAC 58A .0616 PROCEDURES FOR REQUESTING HEARINGS WHEN APPLICANT'S

CHARACTER IS IN QUESTION

(a) When the moral character of an applicant for licensure or approval is in question, the applicant shall not be licensed or approved until the applicant has affirmatively demonstrated that the applicant possesses the requisite truthfulness, honesty, and integrity. For the purposes of this Rule, applicant means any person or entity making application for licensure as a real estate broker or for licensure or approval as a prelicensing or continuing education instructor, director, coordinator, school or sponsor. When the applicant is an entity, it shall be directed and controlled by persons who are truthful and honest and who possess integrity.

(b) When the character of an applicant is in question, the Commission shall defer action upon the application until the applicant is notified by letter. The letter informing the applicant that his or her moral character is in question shall be sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this letter to request a hearing before the Commission. If the applicant fails to request a hearing within this time or if a properly addressed letter is returned to the Commission undelivered, applicant's right to a hearing shall be considered waived and the application shall be deemed denied. If the applicant makes a timely request for a hearing in accordance with the provisions of this Rule, the Commission shall provide the applicant with a Notice of Hearing and hearing as required by G.S. 150B, Article 3A.

(c) Nothing in this Rule shall be interpreted to prevent an unsuccessful applicant from reapplying for licensure or approval if such application is otherwise permitted by law.

History Note: Authority G.S. 93A-4;
 Eff. September 1, 2002;
 Amended Eff. January 1, 2012; April 1, 2006.

21 NCAC 58A .1902 POSTLICENSING EDUCATION REQUIREMENT

(a) The 90 classroom hour postlicensing education program shall consist of three 30 classroom hour courses prescribed by the Commission which may be taken in any sequence. A provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) must satisfactorily complete at least one of the 30-hour courses during each of the first three years following the date of his or her initial licensure as a broker in order to retain his or her eligibility to actively engage in real estate brokerage. Upon completion of all three courses by a provisional broker, the provisional status of the broker's license shall be terminated by the Commission. The three courses shall be devoted to:

- (1) real estate brokerage relationships and responsibilities;
- (2) real estate contracts and transactions; and
- (3) specialized topics, including commercial real estate, rental management, real estate finance, real estate appraisal, real estate development, and real estate regulation.

(b) If a provisional broker as describe in G.S. 93A-4(a1) or G.S. 93A-4.3(d) fails to complete the required postlicensing education described in Paragraph (a) of this Rule by the end of either the first or second year following the date of his or her

initial licensure as a broker, his or her license shall be placed on inactive status. Between the end of the first year after initial licensure and the end of the third year after initial licensure, a provisional broker who is subject of the postlicensing education requirement and who desires to activate a license that is on inactive status shall make up any postlicensing education deficiency as well as satisfy the continuing education requirements for license activation described in Rule .1703 of this Subchapter, satisfy the requirement for supervision by a broker-in-charge described in Rule .0506 of this Subchapter and file with the Commission a request for license activation as described in Rule .0504 of this Subchapter.

(c) If a provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) fails to complete all three postlicensing courses within three years following the date of his or her initial licensure, his or her license shall be placed on inactive status. In order to activate the license, the provisional broker shall demonstrate completion of all three postlicensing courses within the previous three years, which will terminate the provisional status of the broker's license, and shall satisfy the continuing education requirements for license activation described in Rule .1703 of this Subchapter.

*History Note: Authority G.S. 93A-4; 93A-4(a1);
Eff. April 1, 2006;
Amended Eff. January 1, 2012.*

21 NCAC 58A .1903 EXTENSIONS OF TIME TO COMPLETE POSTLICENSING EDUCATION

A provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) may request and be granted an extension of time to satisfy the postlicensing education requirement for any of the first three years following the date of his or her initial licensure as a broker if the licensee provides evidence satisfactory to the Commission that he or she was unable to obtain the necessary education due to an incapacitating illness or other circumstance which existed for a substantial portion of the year in question and which constituted a severe and verifiable hardship such that to comply with the education requirement would have been impossible or unreasonably burdensome. The Commission shall not grant an extension of time when the reason for the request is a business or personal conflict or when, in the opinion of the Commission, the principal reason for the provisional broker's failure to obtain the required education in a timely manner was unreasonable delay on the part of the provisional broker in obtaining such education. If an extension of time is granted, the provisional broker may retain his or her license on active status until expiration of the extension period, but the license shall be automatically changed to inactive status at the end of the extension period unless the licensee obtains the required postlicensing education prior to that time. If an extension of time is not granted, the provisional broker's license shall be treated as described in Rule .1902(b) or (c) of this Section. A request for an extension of time must be submitted on a form provided by the Commission.

*History Note: Authority G.S. 93A-4;
Eff. April 1, 2006;
Amended Eff. January 1, 2012.*

21 NCAC 58C .0207 FACILITIES AND EQUIPMENT

(a) All school facilities and equipment shall be in compliance with all applicable local, state and federal laws and regulations regarding health, safety and welfare, including the Americans with Disabilities Act and other laws relating to accessibility standards for places of public accommodation. Schools shall furnish the Commission with inspection reports from appropriate local building, health and fire inspectors upon request of the Commission.

(b) Classrooms shall be of sufficient size to accommodate comfortably all students enrolled in a course, shall have sufficient light, heat, cooling and ventilation to provide a comfortable environment and shall be free of distractions which would disrupt class sessions.

(c) Classrooms shall contain student desks or worktables sufficient to accommodate all students enrolled in a course and shall have the capability for instructors to make electronic visual presentations.

(d) Classroom facilities must be in a fixed building. No bus, van, tractor-trailer or other motor vehicle shall be used as a classroom facility.

*History Note: Authority G.S. 93A-4(a),(d); 93A-33;
Eff. October 1, 1980;
Amended Eff. February 1, 1989; November 1, 1987; September 1, 1984;
Transferred and Recodified from 21 NCAC 58A .1307 Eff. November 27, 1989;
Amended Eff. January 1, 2012; July 1, 2005; July 1, 2001; July 1, 2000; July 1, 1993.*

21 NCAC 58C .0603 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) An individual seeking original approval as a prelicensing and postlicensing course instructor shall make application on a form provided by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications shall be submitted.

(b) An instructor applicant shall demonstrate that he or she possesses good moral character as set out in G.S. 93A-4(b) and the following qualifications or other qualifications found by the Commission to be equivalent to the following qualifications:.

- (1) a current North Carolina real estate broker license that is not on provisional status;
- (2) a current continuing education record;
- (3) three years active full-time experience in general real estate brokerage, including substantial experience in real estate sales and at least one year of general brokerage experience in North Carolina, within the previous seven years; and
- (4) 60 semester hours of college-level education at an institution accredited by the Southern Association of Colleges and Schools or any

other college accrediting body recognized by the U.S. Department of Education.

For purposes of this Rule, substantial experience is experience which is material, valuable, and worthwhile and not nominal, occasional, or intermittent. The Commission shall consider teaching experience at the secondary or post-secondary level in lieu of a portion of the brokerage experience requirement.

(c) In addition to the qualification requirements stated in Paragraph (b) of this Rule, an applicant shall also demonstrate completion of the Commission's new instructor seminar within three years prior to the date of application and shall submit a one-hour video recording which depicts the applicant teaching a real estate prelicensing or postlicensing course topic and which demonstrates that the applicant possesses the basic teaching skills described in Rule .0604 of this Section. The new instructor seminar requirement shall be waived upon a finding by the Commission that the applicant possesses comparable instructor training, three years full-time experience teaching real estate pre-licensing courses in another state within the previous five years, or other equivalent qualifications. The video recording shall comply with the requirements specified in Rule .0605(c) of this Section. An applicant who is a Commission-approved continuing education update course instructor under Subchapter E, Section .0200 of this Chapter or who holds the Distinguished Real Estate Instructor (DREI) designation granted by the Real Estate Educators Association or an equivalent real estate instructor certification is exempt from the requirement to demonstrate satisfactory teaching skills by submission of a digital video disc (DVD) or videotape. An applicant who is qualified under Paragraph (b) of this Rule but who has not satisfied these additional requirements at the time of application shall be approved and granted a six-month grace period to complete these requirements. The approval of any instructor who is granted such six-month period to complete the requirements shall automatically expire on the last day of the period if the instructor has failed to satisfy his or her qualification deficiencies and the period has not been extended by the Commission. The Commission shall extend the six-month period for up to three additional months when the Commission requires more than 30 days to review and act on a submitted video recording, when the expiration date of the period occurs during a course being taught by the instructor, or when the Commission determines that such extension is otherwise warranted by exceptional circumstances which are outside the instructor's control or when failure to extend the grace period could result in harm or inconvenience to students, licensees, or other innocent persons. An individual applying for instructor approval who was previously allowed the six-month grace period to satisfy the requirements stated in this Paragraph, but did not satisfy such requirements within the allowed grace period, shall not be allowed the grace period.

History Note: Authority G.S. 93A-4; 93A-33; 93A-34; Eff. October 1, 2000; Amended Eff. January 1, 2012; January 1, 2008; April 1, 2006; July 1, 2005; April 1, 2004; September 1, 2002.

21 NCAC 58E .0204 RENEWAL OF APPROVAL

(a) Commission approval of update course instructors expires on the third December 31 following issuance of approval. In order to assure continuous approval, approved instructors must file applications for renewal of approval on a form provided by the Commission on or before December 1 immediately preceding expiration of their approval. Applicants must satisfy the criteria for original approval, with the exception of the requirement in Rule .0203(d) of this Section, in order to renew their approval.

(b) In order to reinstate an expired instructor approval, the former instructor must file an application on a form provided by the Commission and must satisfy the criteria for original approval set forth in Rule .0203(b) and (c) of this Section. If the applicant's prior instructor approval has been expired for more than one year, the applicant must also satisfy the criteria for original approval set forth in Rule .0203(d) of this Section.

History Note: Authority G.S. 93A-3(c); 93A-4.1; Eff. July 1, 1994; Amended Eff. January 1, 2012; July 1, 2000; July 1, 1996; July 1, 1995.

21 NCAC 58E .0507 CLASSROOM FACILITIES

Courses must be conducted in a fixed building. No bus, van, tractor-trailer or other motor vehicle shall be used as a classroom facility. The classroom must:

- (1) be of sufficient size to accommodate comfortably all enrolled students;
- (2) be equipped with student desks, worktables with chairs, or other seating having a writing surface sufficient to provide every student a personal workspace;
- (3) have sufficient light, heat, cooling, and ventilation to provide a comfortable environment, and public address equipment;
- (4) have the capability for instructors to make electronic presentations; and
- (5) be free of distractions that would disrupt class sessions.

History Note: Authority G.S. 93A-3(c); 93A-4.1; Eff. July 1, 1994; Amended Eff. January 1, 2012.

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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