



Bulletin

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Events on the Horizon

Independence Day/Board Office Closed

July 4, 2000

Regular Board Meeting

July 12, 2000

Labor Day/Board Office Closed

September 4, 2000

Regular Board Meeting

October 11, 2000

Veteran's Day/Board Office Closed

November 10, 2000

Thanksgiving Day/Board Office Closed

November 23-24, 2000

Christmas/Board Office Closed

December 25-26, 2000

All General Contractors Licenses Expire

December 31, 2000

New year's Day/Board Office Closed

January 1, 2001

Board Adopts And Amends Rules

The Licensing Board made several changes to its rules this year to become effective on August 1, 2000. These rule changes include:

A amendment to .0202—includes the installation of seating for stadiums, arenas and auditoriums to the S(Metal Erection) specialty classification;

Amendment to .0205—requires the holder of a general contractors license to notify the Board immediately in writing as to the termination date of a qualifying individual and after such notice is filed with the Board or the Board determines that the qualifying individual is no longer connected with the licensee, the license shall be cancelled 30 days after the termination date of the qualifying individual;

Adoption of .0209—requires all applications to be accompanied by a Certificate of Assumed Name, when filing is required, and to require all licensees doing business under an assumed name to comply with the statute requiring the filing of a Certificate of Assumed Name and to notify the Board within 30 days of any change in the name in which the licensee is conducting business;

Repeal of .0307—stated that the Board would notify an applicant of the Board's determination of his application within two weeks of the examination;

Amendment to .0402—deletes a reference to the Examination Information Procedures publication;

Amendment to .0405—provides that applicants will be notified as to instructions for scheduling examinations upon approval of the application by the Board;

Amendment to .0410—requires persons taking the examination to receive a score of at least 70 in order to pass the examination;

Amendment to .0504—allows an audited financial statement to be prepared by either a certified public accountant or an independent accountant;

Amendment to .0901—changes the definition of "owner or former owner" to exclude any owner or former owner of a dwelling which has been the subject of a Homeowners Recovery Fund award resulting from the same dishonest or incompetent conduct or any owner or former owner who constructed or contracted for construction of a dwelling without intending to occupy the dwelling; and

Amendment to .0907—provides that notice to the general contractor of a Homeowners Recovery Fund hearing shall be sufficient if mailed to the last known address of the contractor at least 15 days prior to the hearing date.

—M. Denise Stanford, JD

(Denise Stanford is a partner in the law firm of Bailey & Dixon, L.L.P. which serves as counsel for the Board.)

Carolyn W. Thomasson, R. Kelly Barnhill Reappointed

Governor James B. Hunt, Jr. has reappointed members Carolyn W. Thomasson and R. Kelly Barnhill to the Licensing Board for General Contractors for second five-year terms. Following expiration of their terms as of December 31, 1999, the new terms announced for both Ms. Thomasson and Mr. Barnhill began January 1, 2000. Both terms are to expire as of December 31, 2004.

Thomasson, one of three public member appointees serving on the Licensing Board, has been a branch manager with the Allen Tate Company in Charlotte since 1994.

Barnhill is president of Hendrix-Barnhill Co., Inc., a public utility construction firm in Greenville. Mr. Barnhill, chairman of the Licensing Board from 1997 to 1999, served as president of Carolinas AGC in 1999. Mr. Barnhill is the designated public utilities member of the Licensing Board.

NCLBGC Bulletin

Published semi-annually as a service to general contractor licensees to promote a better understanding of the General Contractors Law (N.C.G.S. §§87-1 to 87-15.9) and to provide information of interest to all construction professionals.

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LICENSING BOARD for
GENERAL CONTRACTORS**

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Planning a Relocation or Move?

Please mail or fax your new address and telephone number to the Licensing Board (include your license number) at:

P.O. Box 17187
Raleigh, NC 27619
Fax: (919) 571-4703

Access License Information On Board's Web Site; License Renewal Suggestions

The Licensing Board's web site provides the most up-to-date information available on over 29,000 actively licensed general contractors. The web site also allows a search of license qualifiers by entering the person's name. By accessing the site's license search functions, visitors see the name of the licensed entity, license number, license status (active, inactive, archived, etc.), most current renewal date, classification and limitation. The information displayed on our web site is updated daily.

Building inspection departments have access to our web site (www.nclbgc.com). This is the most effective way for inspection departments (and you) to check the status of all licensed general contractors in North Carolina 24/7 (24 hours a day, 7 days a week). Other important information provided on the web site includes the examination *Candidate Information Bulletin*, Homeowners Recovery Fund information and the *Laws and Regulations Applicable to General Contracting in the State of North Carolina*. You can select a subject of choice or scroll down through North Carolina's general statutes and regulations to your point of interest. We encourage you to bookmark our web site address for future reference.

Helpful Reminders For 2001 License Renewal

By mid-October, we will have mailed in excess of 29,000 renewal applications (for the year 2001) to all licensed general contractors. The postal service returns undelivered renewal applications to our office marked "undeliverable;" make sure that you notify the Board office if you move and change your address. If we don't have your current address, it's possible that you may not receive a renewal application. The Board's web site (www.nclbgc.com) is a good way to verify your current address in our records. North Carolina's Administrative Code (21 NCAC

12.0505) requires general contractors to notify the Board in writing of an address change within 30 days from the date of the change. You may fax your address change, on company letterhead and signed by the president or owner, to (919) 571-4703. Be sure to list your license number and the exact name in which you are currently licensed. We are unable to accept address changes that do not meet these guidelines.

A variety of problems can result from waiting until the end of December to submit your renewal application. For example, you may be denied building permits or your lending institution may hold up a closing if your license has not been timely renewed and is inactive. Inspection departments and lending institutions may request that you provide a copy of your renewal certificate verifying that your license is valid. All general contractors licenses expire on December 31 each year and we suggest that you renew your license prior to that date since December 30 and 31 fall on a weekend. The Board office will be closed on Monday, January 1, 2001.

Due to the large number of requests for duplicate applications, we ask that you submit your request for a renewal in writing including your license number, exact name as licensed, and your current address. It will take approximately two weeks to receive a renewal application after the request is received by the Board office.

Tax Identification Numbers Required

Tax identification numbers (TIN) will be required on renewal applications beginning with the 2001 renewal year. If this number has already been provided to this Board by the contractor, the number will be pre-printed on the renewal application. Contractors receiving renewal applications without this pre-printed tax identification number will be responsible for listing the number on the renewal application when renewing.

Cleaning Up After The Floods

While North Carolina is still trying to clean up from the damage and destruction caused by the flood waters from last year's hurricane season, many Contractors have asked what they should do in the future. Some Contractors faced the situation of having a 75% complete project destroyed by the floods. Do these Contractors have to pay for cleaning up the damage to the project and completing it? The answer will depend upon the contract for the Owner and the insurance policies that were purchased for the project.

Risk of Loss

The risk of loss during construction is on the builder unless the contract states otherwise. See *Hartford Fire Ins. v. Riefolo Constr. Co.*, 161 N.J. Super. 99, 390 A.2d 1210 (1978). If the contract provides that the Owner shall be required to carry insurance, this contractual clause alone will not shift the risk of loss to the Owner, See *Fred McGilvray, Inc. v. International Builders*, 453 So.2d 103 (Fla. Dist. Ct. App. 1978). The following clause specifically states the risk of loss shifts to the Owner, when the work has been finally inspected and accepted:

"All damage to life or property . . . resulting to work during its progress from whatever cause . . . shall be borne and sustained by the Contractor and all work shall be solely at his risk until it has been finally inspected and accepted."

Pursuant to the above provision, in the event of a flood during construction, the Contractor will bear the cost of repairs. The risk of loss will not shift until the construction is complete. The fact that the Contractor has substan-

tially performed will not enable the Contractor to recover any costs to repair from flood damages unless the work "has been finally inspected and accepted." See *Halmar Constr. Corp. v. New York Envir. Facilities Corp.*, 429 N.Y.S.2d 51 (S.Ct. App. Div. 3rd Dept. 1980).

Time Delays

In most circumstances, bad weather will not be considered a compensable delay. However, a flood or hurricane will usually entitle a Contractor to an extension of performance time. The general rule is that neither party is liable to the other for additional costs resulting solely from delays caused by a flood or hurricane. See *Southern Fire Proofing Co., v. R.F. Ball Constr. Co.*, 334 F.2d 122 (8th Cir. 1964); *Central Coast Constr. Co. v. Lincoln-Way Corp.*, 404 F.2d 1039 (10th Cir. 1968); *J.D. Hedin Constr. Co. v. United States*, 347 F.2d 235 (1965); *Siefford v. Housing Auth.*, 223 N.W.2d 816 (Neb. 1974).

"Builder's Risk"

Insurance

"Builder's Risk" often refers to both property and liability coverage during the construction of a project. The contract will usually dictate who must purchase and maintain insurance during construction. It is the responsibility of the Owner to provide coverage for the work until it is completed, unless otherwise stated in the contract. The responsibility to provide property insurance may be shifted to the Contractor by agreement. It is important to realize that a clause stating that the Owner will purchase and maintain property insurance written on a "builder's risk" or "all risk" form will not shift the risk of loss to the Owner.

Practically, even if the contract states that it is the Owner's responsibility to provide "all risks" insurance during construction, the Contractor must ensure that the policy is purchased and maintained and provides adequate coverage.

Flood Insurance

Most "builders' risk" policies specifically exclude flood damage from coverage. A separate policy or rider, underwritten by the Federal Government, must be purchased and maintained. With the Flood Disaster Protection Act of 1973, National Flood Insurance Program coverage was mandated for many properties. The National Flood Insurance Protection Act of 1994 revised the mandatory purchase laws. Regulations require lenders to ensure that flood insurance is purchased for certain properties. Lenders can face civil penalties if they fail to require the borrower to purchase flood insurance when it is required. Case law has held that these regulations do not create a private cause of action for aggrieved borrowers to pursue against a lender for failure to comply with the requirements of the Act. In the event that the lender fails to follow the regulations mandating flood insurance for a certain piece of property in a flood plain, and the property is flooded, the lender will likely suffer a loss.

Implications for the Contractor

Unless the contract specifically states otherwise, the Contractor will bear the risk of loss during construction. While the contract may provide that the Owner is required to provide and

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DEFINITIONS

Consent Order: An order of the Board resulting from an agreement between the Board and a licensee regarding the revocation or suspension of the license to practice general contracting, or the conditions, limitations or restrictions placed on that license. This is a method of resolving or settling disciplinary or contested cases in lieu of a disciplinary hearing.

Revocation: A Board action which permanently terminates a license by effectively withdrawing that license to practice general contracting.

Suspension: A Board action which inactivates a license to practice general contracting for a set period of time.

Dismissal/Voluntary

Dismissal: A Board action dismissing a contested case, resulting in no disciplinary action against the licensee or Respondent.

Voluntary Surrender:

A licensee's relinquishing or tendering of the license to practice general contracting, pending an investigation or other action by the Board.

Admission of Violation: A document signed by a licensee who admits to the stated violations, agrees not to repeat them, but acknowledges that the Board will use the document against the licensee prospectively should such action become necessary.

Injunction: A Superior Court order entered against an unlicensed contractor who is illegally practicing general contracting. Such an order stops the illegal practice and can be obtained by consent of a cooperating contractor or by default judgment; violation of the injunction is contempt of court.

Code: Provisions of the North Carolina State Building Code (Residential/Vol. VII and previous editions; General Construction/Vol. I).

Disciplinary Action

(The following Board Orders and other Board disciplinary actions reported here are not a complete summary of all activity or a full representation of each case. Every effort is made for accuracy, but such is not guaranteed. Questions or requests for additional information about specific cases should be referred to the Board's Legal Section.)

Final Decisions

Signature Home Corporation (Mecklenburg County; 97C226) License No. 31492. A full hearing of this matter was conducted on November 10, 1999 and the Board issued its Final Agency Decision on December 15, 1999. Violations of the State Building Code (Vol. VII), §R-503.1 and §R-702.2 were found, reflecting incompetency, plus failure to disclose liens and judgments on renewal applications for years 1994, 1995, 1996, 1997 and 1998, constituting fraud or deceit in obtaining a license. The Decision immediately suspended Signature's license for 18 months after which any qualifying party must take and successfully complete the Board's examination in the particular classification(s) for which Signature seeks licensure. No waiver of examination will be allowed for reinstatement.

Bobby Joe Ayers (Buncombe County; 99C86 and 99C149) License No. 16912. On March 8, 2000, without Mr. Ayers or his counsel present, the Board conducted a full hearing of this matter and issued its Final Decision on March 21, 2000 immediately revoking Mr. Ayers' license. More than 35 violations of the State Building Code (Vol. VII) were referenced in the Final Decision, constituting misconduct, gross negligence and incompetency.

SHC Custom Homes, Inc. (Wake County; 98C23, 99C43 and 99C65) License No.

32012. The Board conducted a full hearing of these matters on March 8, 2000 and issued its Final Decision on March 21, 2000. The Board found SHC Custom Homes, Inc. guilty of misconduct, but disciplinary action against Respondent is suspended for one year during which time SHC is considered on probation under the supervision of the Board.

Perry Perdue (Johnston County; 98C118) License No. 35325. The Board conducted a disciplinary hearing on May 10, 2000 and filed its Final Decision on May 23, 2000 immediately revoking the license of Mr. Perdue for misconduct, gross negligence and fraud/deceit in obtaining a license, violations of the State Building Code (Vol. VII) and for failure to timely disclose liens and other financial information to the Board as required by Board regulations.

Revocations or Surrenders of License

Alvin West Construction, Inc. (Wilkes County; 00C08 and 00C09) License No. 45450. On January 19, 2000, Alvin C. West, Jr., President of Alvin West Construction, Inc., voluntarily surrendered the corporate license to the Board. The Board considers surrender of license as permanent revocation.

Piedmont Contractors, Inc. (Wilkes County; 00C19) License No. 36289. On January 19, 2000, Alvin C. West, Jr., surren-

dered the corporate license of Piedmont Contractors, Inc. to the Board. The Board considers surrender of license as permanent revocation.

H M C Development Corp., Incorporated (Wake County; 99C243) License No. 23111. On February 4, 2000, Richard G. Berent, President of H M C Development Corp., Incorporated, voluntarily surrendered the corporate license to the Board. The Board considers surrender of license as permanent revocation.

Kenneth E. Swanson (Clay County; 00C45) License No. 12041. On February 27, 2000, Kenneth E. Swanson, voluntarily surrendered his license to the Board. The Board considers surrender of license as permanent revocation.

S & M Builders, Inc. (Clay County; 00C44) License No. 28742. On February 27, 2000, Kenneth E. Swanson, President of S & M Builders, Inc., voluntarily surrendered the corporate license to the Board. The Board considers surrender of license as permanent revocation.

Truline Truss, Inc. (Alleghany County; 00C39) License No. 42154. On February 10, 2000, Daryl Blevins, General Manager of Truline Truss, Inc., voluntarily surrendered the corporate license to the Board. The Board considers surrender of license as permanent revocation.

DMH Development Corporation (Avery County; 99C335) License No. 34543. On February 24, 2000, Daniel McKiever Hunter, President of

DMH Development Corporation, voluntarily surrendered the corporate license to the Board. The Board considers surrender of license as permanent revocation.

Casa Bella Homes, L.L.C. (Cabarrus County; 99C147 and 99C201) License No. 38524. On March 20, 2000, Joseph LaMonica, Manager of Casa Bella Homes, L.L.C., voluntarily surrendered the corporate license to the Board. The Board considers surrender of license as permanent revocation.

Showplace Homes, Inc. (Gaston County; 00C55) License No. 33603. On March 16, 2000, William Schodorf, President of Showplace Homes, Inc., voluntarily surrendered the corporate license to the Board. The Board considers surrender of license as permanent revocation.

Correction

The Spring/Summer 1996 issue of the *North Carolina Licensing Board for General Contractors Bulletin (Bulletin)* (Volume XVII) incorrectly described disciplinary action against Respondent Carriage Park Development Corporation stating that a Board investigation revealed the licensee had violated N.C.G.S. §§87-11 and 87-13. The Licensing Board made no finding in this complaint and no disciplinary action was taken against Carriage Park Development Corporation.

Consent Orders (Licensees)

Berry G. Mitchell (Wayne County; 95C102) License No. 31250. On December 1, 1999,

a Consent Order was entered in which Mr. Mitchell agreed to a one-year active suspension. Immediately he was to submit to the Board a list of current unfinished construction projects requiring a general contractors license, which the Board ruled he is allowed to complete; however, he may not undertake or manage any new projects costing \$30,000 or more. Following the one-year suspension, Mr. Mitchell's license shall be conditionally restored provided that he abides by the terms set forth in the Consent Order; failure to do so will result in surrender of his license for an additional year. An investigation into the allegations of the complaint revealed that Mr. Mitchell had commenced construction of a residential addition without first securing a building permit and did not call for inspections on each phase of work. Further, the Board's inspection revealed violations of the State Building Code constituting gross negligence, incompetence and misconduct.

Chestnut Hill Construction Service, Inc. (Buncombe County; 98C194) License No. 42299. A Consent Order was entered on December 2, 1999 in which Joseph F. Carney, III, on behalf of Chestnut Hill Construction Service, Inc., agreed to a 90-day license suspension to be conditionally restored for 6 months, following a 30-day active suspension, provided that during the entire discipline period, Chestnut Hill Construction Service, Inc. abides by the terms of the Consent Order. Any violation of the terms of the Consent Order would be followed by an additional 60-day surrender of its license to the Board.

An investigation into the allegations of the complaint revealed that prior to obtaining a license, Chestnut Hill had entered into a contract with an estimated project cost of \$198,433.95.

Thomas Simpson Construction Company, Inc. (Wayne County; 98C192) License No. 17758. On December 5, 1999, a Consent Order was entered in which Thomas D. Simpson, President, agreed to a 6-month suspension, conditionally restored for 2 years, the violation of which would be followed by a 6-month surrender of license at that time. An investigation into the allegations of the complaint revealed that Mr. Simpson had submitted bids to perform site grading and storm drainage work without being licensed in the appropriate license classification as circumscribed in 21 NCAC 12.0202.

D.R. Horton, Inc.—Torrey (Georgia; 98C232) License No. 35827. A Consent Order was entered on December 13, 1999 by which the Vice President of D.R. Horton, Inc.—Torrey agreed to accept a formal reprimand on behalf of the company for actions constituting violations of G.S. §§87-11(a) and 87-13.

Thomas D. Gardner (Haywood County; 98C210) License No. 38491. On December 16, 1999, a Consent Order was entered in which Mr. Gardner agreed to a 90-day suspension to be conditionally restored following 60 days of active suspension. He further agreed that for 6 months, commencing at the end of his active suspension, if he fails to comply with N.C.G.S. §87,

Article 1 he would surrender his license for an additional 30 days. An investigation alleged that Mr. Gardner had applied for a building permit improperly using his name and a company name, while License No. 38491 had been issued to him as an individual or sole proprietor.

Larry D. Buckner (Buncombe County; 97C60 and 99C87) License No. 19268. A Consent Order was entered on December 21, 1999 in which Mr. Buckner agreed to an immediate one-year suspension as follows: 9 months of active suspension, followed by 18 months of conditional restoration, the violation of which would trigger an additional active suspension of 3 months. Additionally, Mr. Buckner agreed to take and pass a Level I building code course within 1 year of December 21, 1999. An investigation into the allegations of the two complaints revealed 19 violations of the State Building Code in the construction of two modular homes.

Lee Stallings (Carteret County; 99C99) License No. 16576. On January 13, 2000, a Consent Order was entered in which Lee Stallings agreed to a one-year suspension of his license, 3 months of which were active, followed by a one-year conditional restoration, during which time a violation of his Consent Order would mean an additional 6 months of active suspension. An investigation alleged that Mr. Stallings had allowed an unlicensed contractor to use his license number in applying for and obtaining a building permit.

Bruce S. Barlow t/a Barlow Const. Co. (Brunswick County; 99C157)

License No. 4593. A Consent Order was entered on January 13, 2000 in which Bruce S. Barlow agreed to a 9-month suspension of license, 3 months of active suspension, followed by a one-year conditional restoration, the violation of which would mean an additional 6-month surrender of his license to the Board. An investigation alleged that Mr. Barlow had signed a sworn statement before a notary authorizing another individual to obtain permits using Mr. Barlow's license number and, further, that the other person's unlicensed company would be performing construction work under Mr. Barlow's license number. Almost a year later, that same unlicensed entity used Mr. Barlow's sworn statement to obtain a building permit for the construction of a residence.

Ricki J. Gehl t/a Gehl Contracting

(Moore County; 99C143) License No. 35138. On January 14, 2000, a Consent Order was entered suspending License No. 35138 for 6 months, 3 months of which were active, followed by a 12-month conditional restoration. Mr. Gehl agreed that if he failed to comply with his Consent Order terms, he would surrender his license for an additional 3 months. The investigation alleged that residential contracts were being entered into by a joint venture using the license number issued to Mr. Gehl as an individual/sole proprietor.

Barry Wayne Greskevitch

(Dare County; 98C139 and 98C140) License No. 20101. A Consent Order was entered on February 14, 2000 in which Mr. Greskevitch agreed to the suspension of his license for 6 months, 2 months of which were active, followed by a 12-month conditional restoration, the violation of which would result in an additional 4-month active suspension. The investigation revealed that Mr. Greskevitch entered into two contracts on the same day in 1998 with the same individuals for the same property with a combined price in excess of his license

limitation; Mr. Greskevitch applied for a building permit stating an amount considerably below the combined amount of the contracts, but still in excess of his current license limitation.

Robert G. Nelon, Jr. (Buncombe County; 98C52) License No. 36069.

The Board entered a Consent Order on April 13, 2000 in which Mr. Nelon agreed to a one-year suspension, 6 months of which are active, followed by an 18-month conditional restoration, the violation of which would be followed by an additional 6 months of license suspension. Additionally, Mr. Nelon agreed to take and pass a Level I building code course within one-year of April 13, 2000. An investigation into the allegations of the complaint cited 15 violations of the State Building Code.

Gary Sanderson t/a Sanderson

Construction (Gaston County; 99C299) License No. 25706. A Consent Order was entered on May 10, 2000 in which Mr. Sanderson agreed to a 6-month license suspension, 2 months of which are active, followed by an 18-month conditional restoration, the violation of which would be followed by an additional 4-month active license suspension. An investigation into the allegations of the complaint revealed that Mr. Sanderson, as holder of a limited license, entered into two contracts in excess of his current license limitation.

James E. McQueen (Maryland/New Hanover County; 99C140) License No. 18627. On May 12, 2000, the Board entered a Consent Order in which Mr. McQueen agreed to a suspension of 6 months, 3 months of which are active, followed by a one-year conditional restoration of his license, the violation of which would be followed by an additional 3-month active license suspension. An investigation alleged that Mr. McQueen obtained a building permit to construct a single-family dwelling in Wilmington, NC; approximately 6 weeks later, an unlicensed entity entered into a contract to construct a single-family dwelling located

on the same property in Wilmington, NC; the unlicensed entity acted as general contractor for the construction. Additionally, Mr. McQueen failed to reveal a judgment and three liens on his 1998 license renewal application with the Board.

Jason D. Pettit (Wake County; 97C63)

License No. 38003. A Consent Order was entered on May 22, 2000 in which Mr. Pettit agreed to a 90-day suspension of his license commencing on May 10, 2000, conditionally restored following a 60-day active suspension, provided that during the 18-month period following the return of his license Mr. Pettit complies with N.C.G.S. §87, Article 1. A violation of the terms of the Consent Order would result in an additional 30-day surrender of his license to the Board. An investigation into the allegations of the complaint cited Mr. Pettit for contracting to make residential repairs using his corporate license number, but in the name of an unlicensed entity. He also failed to first secure the required building permit and then to request inspections while performing the repairs. Additionally, the Board investigator cited 3 other violations of the State Building Code.

Max Pollard & Son Custom Builder, Inc.

(Pitt County; 99C81) License No. 31086. On June 9, 2000, a Consent Order was entered in which Max Pollard, on behalf of Max Pollard & Son Custom Builder, Inc., agreed to a 6-month license suspension, conditionally restored with no active suspension, provided that there are no violations of N.C.G.S. §87, Article 1 for 18 months. Failure to comply with these terms would result in an active suspension of 6 months. An investigation alleged that Max Pollard & Son Custom Builder, Inc. allowed an unlicensed entity to use its license number to support a bid for a construction project for the North Carolina Department of Cultural Resources.

Admissions of Violation (Licensees)

South Brunswick Construction Co.

(Brunswick County; 97C216) License No. 23447. On September 24, 1998, an Admission of Violation was filed in which Larry W. Brown, Qualifier, admitted failing to disclose liens on license renewals for years 1990, 1992, 1993 and 1994. Further, in September of 1997, Respondent signed a partial lien waiver when all amounts due had not been paid.

Robert F. London, Jr. (Dare County; 99C72) License No. 14364. An Admission of Violation was entered on November 23, 1999 in which Mr. London admitted entering into a contract using an assumed company name while being licensed as an individual and for applying for a building permit costing \$30,000 or more after his license had officially lapsed (non-renewal).

Couch Construction Co., Inc. (Mecklenburg County; 99C216) License No. 45427. On January 11, 2000, an Admission of Violation was entered in which R. Andrew Garverick, Executive Vice President of Couch Construction Co., Inc., admitted contracting to construct a single-family dwelling, at a cost of \$30,000 or more, while unlicensed.

Harris Johnson Const. Co., Inc. (Lenoir County; 99C174) License No. 8521. An Admission of Violation was filed on January 12, 2000 in which H. Harris Johnson, on behalf of Harris Johnson Const. Co., Inc., admitted continuing to construct six projects each in excess of \$30,000 with an expired license.

Larry Thomas Atwell (Iredell County; 99C168) License No. 22759. On January 13, 2000, an Admission of Violation was filed in which Mr. Atwell admitted failing to obtain a building permit prior to performing structural repairs to a residence.

Donald Jackson Riddick (Perquimans County; 99C265) License No. 16811. An Admission of Violation was filed on January 13, 2000 in which Mr. Riddick

admitted submitting a proposal to construct a single-family residence for an amount in excess of his license limitation.

Dan. P. Cummings t/a Center Construction (Orange County; 99C222) License No. 39541. On March 2, 2000, an Admission of Violation was filed in which Mr. Cummings admitted allowing Center Construction, Inc., a related but unlicensed corporation, to use his individual license number to submit a proposal in excess of \$30,000. Further, on his 1998 and 1999 license renewal applications he answered "no" to the question "Have there been any changes in the style, name, personnel, ownership, composition or nature of your business . . . that you have not disclosed to this Board?"

Michael Grissom (New Hanover County; 98C282) License No. 42307. The Board accepted the Admission of Violation of Mr. Grissom on March 7, 2000 wherein he admitted entering into a contract to construct a single-family dwelling, at a cost of \$30,000 or more, prior to becoming licensed.

Vandoros Homes of N.C., Inc. (Alamance County; 00C14) License No. 37203. An Admission of Violation was filed on April 26, 2000 in which Vandoros Homes of N.C., Inc. admitted entering into a contract to construct a single-family dwelling in excess of its license limitation.

Thomas W. Adams (Moore County; 99C316) License No. 37778. On May 4, 2000, an Admission of Violation was filed in which Mr. Adams admitted signing an erroneous Affidavit of Work Completion and not revealing complete information concerning controversies and liens on his 2000 license renewal application with the Board.

Prestige Building Company, Inc. (Iredell County; 99C261) License No. 34429. An Admission of Violation was filed on May 4, 2000 in which Michael Clark, President, admitted failing to obtain an additional building permit

prior to making subsequent fireplace repairs to a single-family dwelling. Prestige Building Company, Inc. had built in 1997 and 1998.

Accent Builders of Charlotte, Inc. (South Carolina; 99C366) License No. 34474. On May 10, 2000, an Admission of Violation was filed in which the President of Accent Builders of Charlotte, Inc. admitted entering into a contract to remodel a residence and began the work prior to obtaining a permit.

Elias Joseph Humiston, t/a Humberstone Construction (Onslow County; 99C324) License No. 39682. The Board accepted the Admission of Violation of Mr. Humiston on May 10, 2000, in which he admitted installing an inadequate floor truss to support the proposed floor loads of a second story addition over the living room of an existing single-family home.

Randy L. Southard (Rockingham County; 99C127) License No. 28756. An Admission of Violation was filed on May 26, 2000 in which Mr. Southard admitted failing to provide a new structure with weepholes in the outside wythe of masonry walls at a maximum spacing of 48 inches on centers located immediately above the flashing.

Injunctions (Unlicensed Contractors)

Default Judgment: Permanent Injunctions were obtained by entry of a Default Judgment in Wake County Superior Court against each of the unlicensed contractors listed below for practicing general contracting in an amount of \$30,000 or more, in violation of N.C.G.S. §87-13. In some instances, the Sheriff was unable to locate the contractors and/or Certified Mail was not delivered, but the Board effected service either by newspaper publication or through the Secretary of State; nevertheless, the contractors were enjoined from further practice of general contracting (including bidding) in an amount of \$30,000 or more until such time as he/she becomes licensed by the Board.

Jeff Stamey d/b/a Action Construction (Rowan County; 99C05) Jeff Stamey

d/b/a Action Construction entered into a contract to excavate a building site, perform deck repair, demolition and construction of a garage and retaining wall for the amount of \$47,000 and then contracted to construct a room addition for \$51,900. Default Judgment was entered on May 27, 1999.

Keith Medley Builder, LLC (Henderson County; 99C41) Keith Medley Builder, LLC was paid a total of \$185,687 to construct a new residence in 1997, which did not include the price of the lot. Default Judgment was entered on March 14, 2000.

Morse Building Group, Inc. (Union County; 99C141) In 1998, Morse Building Group, Inc. contracted to construct a custom home for \$429,650. Default Judgment was entered on March 16, 2000.

Affordable Homes of Charlotte, Inc. (Mecklenburg County; 99C192) Affordable Homes of Charlotte, Inc. contracted to build a single-family residence for \$303,000. Default Judgment was entered on May 22, 2000.

Mason Gallagher d/b/a New View Home Improvement Co. (Cumberland County; 99C135) Mason Gallagher d/b/a New View Home Improvement Co. contracted to rebuild a fire damaged home for the price of \$63,000. Default Judgment was entered on May 22, 2000.

David Joyce d/b/a David Joyce Construction (Carteret County; 99C254) David Joyce d/b/a David Joyce Construction submitted a bid to renovate and repair New Covenant Church in Atlantic Beach, NC for the price of \$109,485. Additionally, he impersonated a licensed general contractor by using letterhead printed with "General Contractor Lic. #15134." The license number was previously issued to another general contractor. Default Judgment was entered on May 22, 2000.

Rand Shelburn (Durham County; 99C236) Rand Shelburn was previously licensed but had not renewed his license since 1997. He contracted in 1998 to

upfit an existing structure into a spa for the price of \$62,000. Default Judgment was entered on May 22, 2000.

Consent Order combined with Default Judgment of Unlicensed Contractors: A Permanent Injunction was obtained in the following case by a combination of both a Consent Order and a Default Judgment due to the differing responses of the two individuals involved.

Patrick E. Barber and John E. Hudson d/b/a The Heed Corporation (Mecklenburg County; 99C108) Patrick E. Barber and John E. Hudson d/b/a The Heed Corporation contracted in 1997 to build a home addition for the price of \$42,000; Mr. Hudson applied for a building permit stating the cost of the project was \$28,500. Default Judgment was entered against John E. Hudson on March 14, 2000; however, Patrick E. Barber contacted the Board's attorney after receiving the Summons and Complaint and agreed to the entry of a Consent Order on November 29, 1999.

Consent Order of Unlicensed Contractors: Permanent Injunctions were obtained by entry of a Consent Order in Wake County Superior Court concerning each of the following unlicensed contractors who practiced general contracting in an amount of \$30,000 or more, in violation of N.C.G.S. §87-13, but who admitted to their wrongdoing, paid court costs and service fees and cooperated with the Board in the matter.

Steven Walker Homes, LLC (South Carolina; 99C98) Steven Walker Homes, LLC obtained 14 building permits in 1998 and 1999 for the construction of single-family residences costing \$30,000 or more. He used the license numbers of two licensed general contractors, neither of whom acted as general contractor for any of the projects. A Consent Order was entered on October 15, 1999.

Kevin D. Edmonds (Guilford County; 99C122) In 1998, Mr. Edmonds obtained a building permit as owner/builder for the construction of a single-family residence, but listed the house for sale without occupying it for the required 12 months. A Consent Order was entered on November 17, 1999.

Keith Mercer d/b/a Keith Mercer Construction (Carteret County; 99C94) Mr. Mercer entered into a verbal contract to remodel a residence for \$52,000. A Consent Order was entered on November 17, 1999.

Joe S. Smith d/b/a Carolina Contractors of Rocky Mount (Edgecombe County; 99C62) Mr. Smith contracted to remodel and construct an addition to a residence for \$34,120. A Consent Order was entered on November 17, 1999.

Tim Loftin d/b/a Loftin Builders (Forsyth County; 99C66) Mr. Loftin contracted to renovate and construct an addition to a residence for \$161,200. A Consent Order was entered on December 15, 1999.

DRC Services, Inc. (Dare County; 99C95) In 1997, DRC Services, Inc. contracted on two separate occasions to build condominiums for \$254,800 and \$900,000. The President of DRC Services, Inc. had completed an application for licensure with the Board and relied on a licensed contractor employee (who was to be the qualifier) to file it; no application was ever received by the Board. A Consent Order was entered on December 21, 1999.

J. Stephen Corporation (New Hanover County; 99C114) J. Stephen Corporation contracted to construct a home for \$253,430 and admitted contracting to build projects costing \$30,000 or more for a number of years under the mistaken belief that the individual license of the President of the corporation could be used by the corporation to practice general contracting. A Consent Order was entered on January 4, 2000.

Customized Specialty Contractors, L.P., Lynn B. Leech, Ricki J. Gehl and Bernard M. Stanfield (Moore County; 99C144) Customized Specialty Contractors, L.P. contracted on at least 4 occasions to construct homes costing in excess of \$100,000 without being properly licensed. Ms. Leech, Mr. Gehl and Mr. Stanfield entered into a joint venture agreement forming Customized Specialty Contractors, L.P. to construct homes

using the license number previously issued to Mr. Gehl as an individual/sole proprietor. A Consent Order was entered on January 12, 2000.

James Bechtold (Iredell County; 99C102) Mr. Bechtold obtained a building permit as owner/builder to construct a home, but listed the home for sale without occupying it for 12 months after completion as North Carolina law requires. A Consent Order was entered on January 12, 2000.

Danny Davis d/b/a Danny Davis' Construction Co. (Lenoir County; 99C29) Mr. Davis contracted to construct an addition to an existing home for \$36,448. Additionally, he applied for a building permit representing the total cost of the project as \$29,500. A Consent Order was entered on February 21, 2000.

C.J. Ash d/b/a C.J. Ash Enterprises (South Carolina; 99C205) C.J. Ash entered into two contracts to remodel a home at the same location. Each contract was for \$30,000 with a total price of \$60,000. A Consent Order was entered on March 2, 2000.

Steve Wayne Wallace (Person County; 99C219) Mr. Wallace undertook to construct a home for sale to the public in an amount exceeding \$30,000. A Consent Order was entered on March 2, 2000.

Rachel P. Martin (New Hanover County; 99C218) Ms. Martin applied for a building permit as owner/builder for the construction of a single-family residence listing it for sale for \$249,000 prior to obtaining a certificate of occupancy. A Consent Order was entered March 2, 2000.

Gregory R. Roberts d/b/a Lonesome Mountain Paving Co. (Madison County; 99C292) Mr. Roberts submitted a bid for road paving for the price of \$44,900. A Consent Order was entered on March 2, 2000.

Dale Patterson d/b/a Patterson Construction (Pender County; 99C218) Mr. Patterson submitted a bid

to a Town Community Development Program to rehabilitate a residence for \$33,825. A Consent Order was entered on March 2, 2000.

Al Chastain d/b/a Chastain Enterprises (Buncombe County; 99C295) Mr. Chastain submitted a bid for paving a town road for the price of \$50,350. The town accepted Mr. Chastain's proposal and he undertook the project. A Consent Order was entered on March 14, 2000.

Homeshield Inc. (Carteret County; 99C263) In 1998, Homeshield, Inc. submitted several proposals to furnish and install rolling shutters for a home. One of the proposals was for \$66,027.32. A Consent Order was entered on March 14, 2000.

Carolina Enclosures, Inc. (Wake County; 99C240) In 1999, Carolina Enclosures, Inc. contracted to construct a solarium/sun room for \$34,973. A Consent Order was entered on March 14, 2000.

Butch B. Brown d/b/a Fairway Home Improvement (Montgomery County; 99C129) In 1998, Mr. Brown contracted to construct an addition to a home for \$35,536. A Consent Order was entered on March 16, 2000.

North Shore Cable Contractors, Inc. (Ohio; 99C252) North Shore Cable Contractors, Inc. contracted to install public communication distribution facilities for a price in excess of \$30,000 with the erroneous belief that it was not required to first hold a general contractors license. A Consent Order was entered on March 17, 2000.

Woodpecker Enterprises, Inc. (Wake County; 99C173) At the request of an architect, Woodpecker Enterprises, Inc. submitted a bid to install architectural woodwork in the office of the NC Secretary of State for \$63,200 without realizing that this action constituted the practice of general contracting as defined by N.C.G.S. §87-1. A Consent Order was entered on March 17, 2000.

Richard Harper (Buncombe County; 99C266) Mr. Harper obtained a building permit as owner/builder to construct a single-family residence, but prior to completion listed the property for sale for \$94,900. A Consent Order was entered on April 3, 2000.

Larry Toler (Craven County; 99C132) Mr. Toler contracted to repair a home damaged by Hurricane Fran (1996) for \$57,420. A Consent Order was entered on April 3, 2000.

Charles Murdaugh d/b/a C & S Quality Homes (Forsyth County; 99C224) Mr. Murdaugh contracted to construct an addition to a home for \$35,480. A Consent Order was entered on April 3, 2000.

Purofirst of the Cape Fear, Inc. (Brunswick County; 99C242) Purofirst of the Cape Fear, Inc. submitted a proposal to repair a fire damaged home for \$37,157.27. The Consent Order was entered on April 3, 2000.

Richard Incorporated (Ohio; 98C262) Richard Incorporated contracted to renovate a hotel for \$2,399,949. A Consent Order was entered on April 11, 2000.

David T. Harper (Henderson County; 99C267) Mr. Harper obtained a building permit as owner/builder to construct a single-family residence, but prior to completion listed the property for sale for \$94,400. A Consent Order was entered on April 11, 2000.

Neil Townsend (Rutherford County; 98C176) Mr. Townsend obtained a building permit as owner/builder for the construction of a single-family residence on property he did not own at the time. The property owner agreed to finance the construction of the house and Mr. Townsend's purchase of it at completion. Mr. Townsend subsequently became unable to purchase the home and the home was sold to another. A Consent Order was entered on April 17, 2000.

Barbara Toney d/b/a T & A Construction (Burke County; 99C172) The

complainants in this case contend that Ms. Toney represented herself as a licensed general contractor, which Ms. Toney denies. A Consent Order was entered on April 17, 2000.

Stan Tucker d/b/a Tucker Renovations & Contracting (Mecklenburg County; 00C04) Mr. Tucker submitted a proposal to construct a sunroom addition for \$34,527. A Consent Order was entered on May 3, 2000.

Daniel Pantis (Mecklenburg County; 99C187) Mr. Pantis obtained a building permit as owner/builder to construct a single-family residence. He undertook construction of the house at a cost of \$30,000 or more, and after it passed final inspection he placed a "For Sale by Owner" sign on it. A Consent Order was entered on May 3, 2000.

Paul B. Mixon d/b/a Mixon's Renovations (New Hanover County; 99C160) Mr. Mixon contracted to replace a hurricane damaged roof for \$94,845. A Consent Order was entered on May 3, 2000.

Joan M. Palmer (Onslow County; 99C195) Ms. Palmer obtained a building permit as owner/builder to construct a single-family residence costing \$30,000 or more, but listed the property for sale prior to living in it for one year as required by North Carolina law. A Consent Order was entered on May 10, 2000.

Jeffrey E. Barnett d/b/a Unlimited Contracting (Wake County; 99C312, 99C348, 00C15 and 99C339) Mr. Barnett contracted on three separate occasions to construct additions to homes for \$50,372, \$44,568 and \$112,679 respectively. A Consent Order was entered on May 19, 2000.

Cornelius Smith (Mecklenburg County; 99C296) Cornelius Smith contracted to renovate and construct an addition to a home for \$193,490. A Consent Order was entered on May 19, 2000.

Will Smith d/b/a CCA, Inc. Construction Services (New Hanover County; 00C01) Mr. Smith submitted a construction proposal/contract to perform struc-

tural repairs and install a new roof on an existing building for \$16,173. After beginning construction, additional damage to the building was discovered, and Mr. Smith executed a second contract for \$18,783. The total amount of the two contracts was \$34,956. A Consent Order was entered on May 19, 2000.

Walsler Haddon Allen, III (New Hanover County; 99C326) Mr. Allen obtained a building permit as owner/builder to construct a single-family dwelling for an estimated cost of \$83,046. Following completion, Allen resided in the home for one month and then leased it to a tenant for the next month after which it was listed for sale. A Consent Order was entered on May 24, 2000.

Mike A. Lewis (Guilford County; 99C352) Mr. Lewis contracted to construct an addition to an existing home for \$38,200. A Consent Order was entered on May 31, 2000.

William Cummins (Mecklenburg County; 99C244) Mr. Cummins contracted to construct a garage and room addition for \$36,000. A Consent Order was entered on May 31, 2000.

John L. Pace d/b/a Tarheel Paving, Inc. (Henderson County; 99C304) Pace Brothers Paving submitted a bid for street paving in Henderson County for \$74,451. Tarheel Paving was to complete the job as a subcontractor. A misunderstanding with a Town Manager, who received the bids, resulted in the bid being submitted under the name of Pace Brothers Paving/Tarheel. Pace Brothers Construction Company, Inc. is a licensed general contractor. The town accepted the bid submitted under the name of Pace Brothers Paving/Tarheel, and Mr. Pace executed the construction agreement as Tarheel Paving/Pace Brothers. When the project was completed, the town made payment directly to Tarheel Paving Co., Inc. A Consent Order was entered on May 31, 2000.

Donald Ray Goodwin (Scotland County; 99C356) Mr. Goodwin entered into a \$5,000 contract with a licensed general

contractor who was to ensure that a home being constructed for sale would be built "by NC Code or better." The contract also stated that the licensed general contractor would oversee the project until completion, that Mr. Goodwin would be responsible for all bills, and would furnish all materials. Mr. Goodwin supervised and managed all construction activities and contracted with all subcontractors. A Consent Order was entered on May 31, 2000.

Edward J. Fiola d/b/a E.F. Builders & Remodelors (Mecklenburg County; 00C16) Mr. Fiola contracted to construct a room addition and garage on an existing home for \$54,315 and undertook the construction. A Consent Order was entered on May 31, 2000.

Contractor Jailed For Contempt Of Court

On September 23, 1998, the Wake County Superior Court enjoined Gene Dial from the further practice of general contracting. Despite the injunction, Mr. Dial contracted with the Southern Christian Holy Deliverance Church of God in Raeford, North Carolina to construct an addition for an amount exceeding \$30,000. A Code Enforcement Official for the City of Raeford reported Gene Dial to the Board after reviewing the report of the injunction in the Board's *Bulletin* (Vol. XXII Fall/Winter). Following investigation, the Board filed a Motion asking the Court to hold Mr. Dial in contempt.

On April 24, 2000, the Wake County Superior Court found Mr. Dial guilty of criminal contempt of the Court's September 23, 1998 Order that enjoined him from the further practice of general contracting. The Court fined Mr. Dial \$500 and imposed a 30-day sentence of imprisonment. All but 2 days of the sentence was suspended, and the Court ordered Mr. Dial be incarcerated for 2 days in Moore County jail.

General Contractors Licenses Are Not Transferable

North Carolina's general contractor licensing statutes (G.S. 87-1, *et seq.*) require that "any person, firm or corporation" engaging in the practice of general contracting must hold a general contractor's license. This means that any individual, sole proprietorship, partnership, corporation or limited liability company (LLC) practicing general contracting must have a license. The statute does not permit the holder of a sole proprietorship license, for instance, to allow a partnership or corporation to use that sole proprietorship license for any reason.

The North Carolina Licensing Board for General Contractors' office frequently investigates complaints and reports alleging that the holder of an individual or sole proprietorship license has allowed an unlicensed partnership or corporation to use his or her license. In many instances the licensee has an ownership interest in the unlicensed partnership or corporation; sometimes the licensee is paid to allow the unlicensed entity the use of his or her license.

This is a violation of the general contractor licensing laws. In some cases, the individual or sole proprietor licensee believes the arrangement is justifiable or legal if he or she is an

employee of an unlicensed contractor or if there is no written partnership agreement memorializing the terms of the partnership. However, an unlicensed contractor may not circumvent the licensing requirements by hiring an employee who is a licensee. Also, a partnership may exist, and frequently does, without a written partnership agreement. Many Board complaints involve a licensee who enters into a partnership with a real estate development firm with realtors or other investors. In certain cases, this arrangement would require the partnership be licensed for construction projects where the cost of the undertaking is \$30,000 or more.

Cleaning Up After The Floods

Continued from Page 3

maintain insurance, this alone will not shift the risk of loss to the Owner. The Contractor will still bear the risk of loss. Additionally, the Contractor will want to make sure that the Owner provides and maintains adequate insurance. Most "builders' risk" policies specifically exclude flood damage from coverage. The Owner and Contractor might discuss purchasing a separate rider for flood insurance.

In the event that a project is flooded and there was no contractual provision shifting the risk of loss to the Owner and no flood insurance was purchased, the Contractor will bear the cost of any damage caused by the flood. The Contractor may be entitled to a time extension depending upon the contract with the Owner. If the property is determined to be in a flood plain and condemned so that no building can occur on the property, then the Contractor will likely be excused by the doctrine of impossibility. This doctrine is only used in narrow circumstances when it is impossible to per-

form the contract. If the government demands that there will be no building on a certain piece of property, then it would be impossible for the Contractor to complete the job. In this case, the Contractor still would not recover for the improvements made to the property before the flood.

Contributed by Theresa L. Noble, Attorney, Safran Law Offices, Raleigh, North Carolina

<u>NCLBGC</u>		
<u>Examination Results</u>		
(January 1 - May 31, 2000)		
	<u>Passed</u>	<u>Failed</u>
Building Contractor	292	325
Residential Contractor	147	306
Highway Contractor	18	36
Public Utilities Contractor	14	25
Specialties	50	106
TOTAL	511	798

Homeowners **Recovery Fund** **Awards**

The Licensing Board conducted Homeowners Recovery Fund hearings on Wednesday, May 24, 2000. After hearings on the claims presented, monetary awards have been issued to the following applicants for reimbursement from the Recovery Fund:

- Thomas and Margaret Patterson, 95 HRF 7; \$14,000
- Michael and Nancy Bruni, 98 HRF 4; \$23,500
- Malcolm and Kathy Martin, 99 HRF 1; \$4,750
- Danny and Deborah O'Harrow, 99 HRF 5; \$9,700
- Laurence and Inga Kish, 99 HRF 11; \$11,000
- Rick and Nancy Ramaley, 99 HRF 13; \$6,700
- Billy and Jillana Staton, 99 HRF 15; \$2,000

NASCLA National Association of State Contractors' Licensing Agencies

IF YOU NEED INFORMATION ON CONTRACTOR LICENSING IN OTHER STATES, YOU NEED A COPY OF THE CONTRACTOR'S STATE LICENSING INFORMATION DIRECTORY.

This publication identifies over 150 state agencies that regulate the construction industry. The directory summarizes the prequalification, licensing, examination and bonding requirements. Information on reciprocity, license classifications, and incorporating is also included. 180 pages. 2000 edition.

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