

Owner-Contractor Building Construction Projects – New Legal Requirements

Introduction

The 2011 General Assembly enacted legislation ([S.L. 2011-376](#)) imposing new requirements for building construction projects supervised by the property owner himself in lieu of hiring a licensed general contractor (“owner-contractor projects”). The new requirements went into effect on June 27, 2011 and now apply to all owner-contractor projects. The information below summarizes the new law, and discusses some practical questions that may arise as local governments, building inspectors, and citizens comply with the new requirements.

Summary of New Legal Requirements

Current Law: North Carolina law currently requires any building construction or alteration project costing \$30,000 or more to be superintended (supervised and managed) by a general contractor licensed in this state. (G.S. 87-1) Exempt from this requirement are building construction projects where the property owner intends to solely occupy the building being altered or built on his own property. If the building is not occupied solely by the property owner for at least 12 months following completion of the project, it is presumed that the property owner did not intend to solely occupy the building. (G.S. 87-1(b)(2)) If the property owner meets these criteria, he can, in essence, act as his own general contractor and perform the duty of superintending the construction project himself and thus, is exempt from the requirement of hiring a licensed general contractor. However, the law does not allow the property owner to obtain a building permit under this exemption and then delegate his duty to superintend the construction project to an unlicensed person. This duty can only be delegated to a general contractor licensed in this state. The new legislation is intended to strengthen enforcement of the exemption to help ensure that building construction and alteration projects otherwise required to be superintended by a licensed general contractor are not, in fact, being superintended by unlicensed persons who are not eligible under the owner-contractor exemption.

Local governments sometimes use the owner-contractor exemption as a cost-saving measure on public building construction projects, electing to act as their own general contractor and directly supervising their subcontractors in lieu of hiring a general contractor to superintend the project on their behalf. Local governments are subject to the same eligibility criteria and restrictions under the exemption as are private property owners.

This exemption applies to building alteration or construction projects on property owned by individuals as well as firms and corporations (including local governments). The

exemption – and the criteria for eligibility under the exemption – applies to both residential and commercial building construction projects.

New Requirements: [S.L. 2011-376 \(H 648\)](#) does not change the eligibility criteria under which a property owner qualifies for the owner-contractor exemption. Instead, the legislation amends G.S. 87-14 to now require a property owner who wishes to act as his own general contractor to submit an affidavit to the local building inspector verifying his eligibility for the owner-contractor exemption. The person executing the affidavit must attest to three facts:

1. The person is the owner of the property on which the building is being constructed or altered, or, if the property is owned by a firm or corporation, the person is legally authorized to act on the firm or corporation's behalf;
2. The person will personally superintend and manage all aspects of the construction or alteration of the building, and that he will not delegate this duty to any other person who is not a licensed general contractor; and
3. The person will be personally present for all building inspections required under the North Carolina State Building Code (this last requirement does not apply if the plans for the building were drawn and sealed by a licensed architect).

The local building inspector is required to submit the affidavit to the North Carolina Licensing Board for General Contractors for verification that the property owner is eligible to act as his own general contractor under the exemption to G.S. 87-1. If the Board determines that the property owner is not eligible for the exemption, the building permit issued for the construction project must be revoked. In addition, local building inspectors are prohibited from conducting building inspections during construction if the property owner is not personally present during the inspection (this prohibition does not apply if the building plans were drawn and sealed by a licensed architect).

Application to Local Government Building Projects: These requirements *do* apply to local governments that choose to act as their own general contractor on public building construction or alteration projects. However, the legislation does not specify which employee or official must submit the affidavit on behalf of the local government. Given the formal requirement of submitting a verified affidavit, the individual should be:

1. Legally authorized to act on behalf of the unit of government (such as the manager, finance officer, or public works director);
2. Capable of personally supervising the construction project (the individual does not have to be a licensed general contractor, but should be someone with enough knowledge and experience to properly supervise the construction project);
3. Able to be personally present at all building inspections (unless the plans are drawn and sealed by a licensed architect); and
4. Clearly authorized in writing to undertake these activities on behalf of the unit of government, including submitting the required affidavit.

Frequently Asked Questions

1. ***What building construction projects are required to be superintended by a licensed general contractor?***

Under North Carolina law (G.S. 87-1), the construction of any building, highway, public utilities, grading or any improvement or structure where the cost of the construction is \$30,000 or more must be superintended (supervised and managed) by a general contractor who is licensed in this state. A licensed general contractor is also required for erecting a North Carolina labeled manufactured modular building meeting the North Carolina State Building Code. Among the exemptions to this requirement are “owner-contractor” projects discussed in Question 2.

2. ***Who is eligible for the “owner-contractor” exemption?***

A property owner can act as his own general contractor and thus be exempt from the requirement to hire a licensed general contractor for building projects costing \$30,000 or more if the property owner (including the owner’s family) intends to solely occupy the building being altered or built on his property. If the building is not solely occupied by the property owner for at least 12 months following completion of the project, it is presumed that the property owner did not intend to solely occupy the building. (G.S. 87-1(b)(2))

In addition, a property owner who acts as his own general contractor must personally supervise and manage the building construction or alteration project for which the building permit was obtained under the exemption. The property owner cannot then delegate this duty to an unlicensed person to superintend the project on his behalf. After the building permit has been obtained pursuant to the exemption, the property owner can *only* delegate this duty to a general contractor licensed in this state.

This exemption applies to building alteration or construction projects on property owned by individuals as well as firms and corporations (including local governments). The exemption – and the criteria for eligibility under the exemption – applies to both residential and commercial building construction projects.

3. ***How does a property owner qualify for the exemption?***

If a property owner meets the eligibility requirements for the “owner-contractor” exemption (he owns the property on which the building is being altered or constructed and intends to solely occupy the building once completed), the property owner must submit a verified affidavit to the local building inspector attesting to certain facts when the property owner applies for a building permit. The building inspector cannot issue a building permit unless the property owner submits the affidavit.

4. ***What information must the affidavit contain?***

At a minimum, the affidavit must attest to the following three facts:

1. The person is the owner of the property on which the building is being altered or constructed, or if the property is owned by a firm or corporation, the person is legally authorized to act on the firm or corporation’s behalf;

2. The person will personally superintend and manage all aspects of the construction of the building, and that he will not delegate this duty to any other person who is not a licensed general contractor; and
3. The person will be personally present for all building inspections required under the North Carolina State Building Code (this last requirement does not apply if the plans for the building were drawn and sealed by a licensed architect).

5. ***Is the property owner required to submit any additional information or supporting documentation with the affidavit?***

The new law does not require that the property owner submit any additional information or supporting documentation with his affidavit. However, a local building inspector may ask questions, require the property owner to fill out a questionnaire or form, or request additional information in determining whether the property owner appears to qualify for the exemption prior to issuing the building permit.

6. ***Who must sign the affidavit?***

The affidavit must be signed by the owner of the property on which the building is being constructed. An individual who is or will be occupying the structure but who does not have an ownership interest in the property cannot sign the affidavit. If the property is owned by a firm or corporation (including a unit of local government), the person submitting the affidavit must be legally authorized to act on the entity's behalf.

7. ***If the property is owned by multiple individuals (not a firm or corporation), do all property owners have to sign the affidavit?***

The new law is not clear on this point. The language of G.S. 87-14(a)(1)a. does not specifically require *all* individual property owners to sign the affidavit, so it is reasonable to assume that the affidavit may be signed by only one of the property owners. For example, if the property is jointly owned by a husband and wife, the affidavit does not have to be signed by both spouses and may be signed by either the husband *or* the wife. However, if the husband *and* the wife sign the affidavit, then *they both* must personally supervise the building project *and* be personally present at all building inspections (unless the plans were drawn and sealed by a licensed architect).

8. ***If the property is owned by a firm or corporation, do all partners in the firm or corporation have to sign the affidavit?***

No. The new law is clear on this point, and only requires the affidavit to be executed by a person who has legal authority to act on behalf of the firm or corporation (including a unit of local government). It would be wise for the person who is acting on behalf of the firm or corporation to have this legal authority in writing.

9. ***If the property is owned by an individual, can that individual authorize someone else to sign the affidavit on his behalf?***

No. G.S. 87-14(a)(1)a. specifically requires the person submitting the affidavit to attest that he or she owns the property on which the building is being altered or constructed. Only in the case of property owned by a firm or corporation (including a unit of local government) can an individual be authorized to act on the property owner's behalf.

10. *Is a form affidavit available?*

Yes. A form affidavit has been developed by the UNC School of Government and has been approved by the North Carolina Licensing Board for General Contractors. A copy of the form affidavit is available on the SOG's website at <http://dailybulletin.unc.edu/summaries11/category18.html>.

11. *What does the building inspector do with the affidavit?*

The building inspector must transmit a copy of the affidavit to the North Carolina Licensing Board for General Contractors for verification that the property owner is validly entitled to claim the exemption under G.S. 87-1(b)(2).

12. *What kind of review does the Licensing Board conduct?*

The Licensing Board is required to review the affidavit to verify that the property owner was validly entitled to claim the exemption under G.S. 87-1(b)(2).

13. *What is the time frame for the Licensing Board's determination?*

The new law does not specify the time frame within which the Licensing Board must render a determination as to the property owner's eligibility to claim the exemption under G.S. 87-1(b)(2).

14. *Must the building inspector wait for a determination from the Licensing Board before issuing the building permit?*

No. The new law does not require the building inspector to delay issuing the building permit pending the Licensing Board's review of the affidavit submitted by the property owner. In fact, if the affidavit appears valid when presented to the building inspector and, based on the information contained in the affidavit along with other information the building inspector might request, the owner appears to be eligible for the exemption, the building inspector does not have a valid legal basis to delay issuing the building permit if all other permit requirements have been met. A local building inspector may ask questions, require the property owner to fill out a questionnaire or form, or request additional information in determining whether the property owner appears to qualify for the exemption prior to issuing the building permit.

15. *What happens if the Licensing Board determines that the owner is not eligible for the owner-contractor exemption?*

If the Board determines that the property owner is not eligible for the exemption under G.S. 87-1(b)(2), the Board will notify the building inspector of its determination and the building inspector is required to revoke the building permit pursuant to either G.S. 153A-362 (for counties) or G.S. 160A-422 (for cities).

16. *What does the property owner do if his building permit is revoked?*

If a building permit is revoked, all construction activity must cease. In addition, other permits obtained under state or local laws applicable to the project also may be revoked. The property owner then has three choices: (1) modify his circumstances to become

eligible for the exemption; (2) hire a licensed general contractor to superintend the project; or (3) abandon the project altogether. Any resumption of construction activity on the project will require the issuance of a new building permit (and perhaps other permits applicable to the project).

17. *Does the property owner have to be present at all building inspections?*

Yes. One of the facts to which the property owner (or person legally authorized to act on behalf of the firm or corporation owning the property) must attest in the affidavit is that he or she will be personally present at all building inspections required by the North Carolina State Building Code. If the person who executed the affidavit is not personally present, the building inspector is not allowed to conduct the inspection. This requirement does not apply if the plans for the building were drawn and sealed by a licensed architect.

18. *Can the property owner delegate the responsibility of supervising the building project to someone else?*

No. One of the facts to which the property owner (or person legally authorized to act on behalf of the firm or corporation owning the property) must attest in the affidavit is that he or she will personally superintend and manage all aspects of the alteration or construction of the building and will not delegate this duty to any other person who is not a general contractor licensed in this state. If the person who executed the affidavit becomes unwilling or unable to personally supervise the project once construction has started, he or she can *only* delegate this responsibility to a general contractor licensed in this state.

19. *Are there any penalties for violating the new law?*

Yes. If the Licensing Board determines that the property owner was not eligible for the exemption under G.S. 87-1(b)(2), the building inspector must revoke the building permit pursuant to either G.S. 153A-362 (for counties) or G.S. 160A-422 (for cities). If the building construction does not cease or resumes without complying with applicable state laws, G.S. 87-13.1 authorizes the Licensing Board to apply to Superior Court for a restraining order and injunction to stop further construction activity, and the court may order the property owner to pay for the Board’s reasonable costs associated with investigating and prosecuting the violation. Continued construction activity by the property owner may also constitute a violation of the requirements of G.S. 87-1, which is punishable as a Class 2 misdemeanor. In addition, swearing falsely on the affidavit (perjury) is also a criminal offense punishable as a Class F felony. (G.S. 14-209)

20. *If I have any questions or need more information, who can I contact?*

General questions about the new law:	General contractor licensure:	Building code enforcement:
UNC School of Government Norma Houston nhouston@sog.unc.edu Rich Ducker ducker@sog.unc.edu	North Carolina Licensing Board for General Contractors (919) 571-4183	N.C. Department of Insurance Office of State Fire Marshall Engineering Division (919) 661-5880