
Coates' Canons Blog: New Requirements for “Owner-Contractor” Building Projects

By Norma Houston

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One of the bills enacted by the General Assembly this session imposed new requirements for

“owner-contractor” building construction projects. S.L. 2011-376 (HB 648) is summarized in the Purchasing and Contracting Legislative Wrap-up blog post and the 2011 Purchasing and Contracting Legislative Summary. Since the law’s enactment, a number of questions arose about these new requirements. This post answers those questions and others that might arise as local governments and property owners comply with these new requirements, which went into effect on July 27, 2011.

What does this law require?

S.L. 2011-376 imposes new requirements on property owners who superintend (supervise and manage) building construction projects on their own property. G.S. 87-1 requires any building construction or alteration project costing \$30,000 or more to be superintended by a general contractor licensed in this state. 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 eligible for the owner-contractor exemption, the property owner can, in essence, act as his own general contractor and perform the duty of superintending the project himself. However, the property owner cannot obtain a building permit under this exemption and then delegate this duty to an unlicensed person. This duty can only be delegated to a licensed general contractor.

The new law requires 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 under the owner-contractor exemption. 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).

Do these new requirements apply to local government building projects?

Yes. The new requirements *do* apply to local governments that choose to act as their own general contractor on public building construction 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.

How does a property owner qualify for the owner-contractor exemption?

If a property owner meets the eligibility requirements for the “owner-contractor” exemption (he must own the property on which the building construction is occurring and intend to solely occupy the building once completed), the property owner must submit the required verified affidavit to the local building inspector when the property owner applies for a building permit. The building inspector cannot issue a building permit unless the property owner submits the affidavit.

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

The new law does not require this. 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.

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 building but who does not have an ownership interest in the property cannot sign the affidavit. If the property is owned by a firm, corporation, or unit of local government, the person submitting the affidavit must be legally authorized to act on the entity's behalf.

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

The new law is not clear on this point. It does not specifically require *all* individual property owners 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. 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).

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 entity to have this legal authority in writing.

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

No. The new law specifically requires the person submitting the affidavit to attest that he or she is 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.

Is a form affidavit available?

Yes. A form affidavit has been developed by the SOG and approved by the NC Licensing Board for General Contractors. A copy of the form affidavit is available at the SOG's local government purchasing and contracting legislative update webpage (go to 2012 updates for the form affidavit).

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 owner-contractor exemption.

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 owner-contractor exemption. The new law does not specify the time frame within which the Licensing Board must render its determination.

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 property owner's affidavit. 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.

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

If the Board determines that the property owner is not eligible for the owner-contractor exemption, 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).

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

If a building permit is revoked, all construction activity must cease, and 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 a new building permit (and perhaps other permits applicable to the project).

Does the property owner really have to be personally 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 individual 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.

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 building construction project and will not delegate this duty to any other person who is not a general contractor licensed in this state. If the individual 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.

Are there any penalties for violating the new law?

Yes. If the Licensing Board determines that the property owner was not entitled to claim the owner-contractor exemption, the building inspector must revoke the building permit. 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.

If you have additional questions about the new law, please feel free to post them below.

Links

- canons.sog.unc.edu/new-requirements-for-%e2%80%9cowner-contractor%e2%80%9d-building-projects/construction-hat/
- ncleg.net/Sessions/2011/Bills/House/HTML/H648v5.html
- www.sog.unc.edu/resources/microsites/local-government-purchasing-and-contracting/legislative-updates
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=87-1
- www.ncleg.net/Sessions/2011/Bills/House/HTML/H648v5.html
- www.sog.unc.edu/node/767
- www.sog.unc.edu/sites/www.sog.unc.edu/files/doc_warehouse/Owner%20Exemption%20Affidavit%20Pursuant%20to%20G%20S%20%2087-14%20%28a%29%20%281%29.pdf
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-362
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-422
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