



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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1/10/2018 10:08:47 AM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 1)**

AGENCY **Contractor Licensing Board**

RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **28-04**

RULE NAME **Contractor Licensing Board**

CITE AUTHORITY **W. Va. Code §21-11-10(c)**

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
Friday, February 09, 2018 5:00 PM

WRITTEN COMMENTS MAY BE MAILED TO
**Mitchell E. Woodrum, Commissioner
Division of Labor
1900 Kanawha Boulevard East, Capitol Complex
Building 3, Room 200
Charleston, WV 25305**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 28-04



Rule Id: 16428



Document: 50141



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**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 2)**

AGENCY **Contractor Licensing Board**

RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **28-04**

RULE NAME **Contractor Licensing Board**

CITE AUTHORITY **W. Va. Code §21-11-10(c)**

PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

Any person licensed pursuant to the Contractor Licensing Act must have a written contract with a customer for any work or project with an aggregate value (including all materials and labor) of \$10,000 or more. This procedural rule includes the Contractor Licensing Board's minimum requirements that must be included in a written contract and a standard contract form that may be used by licensees when performing work with an aggregate value of \$10,000 or more.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY **Contractor Licensing Board**

RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **28-04**

RULE NAME **Contractor Licensing Board**

CITE AUTHORITY **W. Va. Code §21-11-10(c)**

PRIMARY CONTACT

Mitchell E. Woodrum
1900 Kanawha Boulevard East, Capitol Complex
Building 3, Room 200
Charleston, WV 25305

SECONDARY CONTACT

Michael S. Sams
1900 Kanawha Boulevard East, Capitol Complex
Building 3, Room 200
Charleston, WV 25305

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY Contractor Licensing Board

RULE TYPE Procedural AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 28-04

RULE NAME Contractor Licensing Board

CITE AUTHORITY W. Va. Code §21-11-10(c)

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

The proposed procedural rule will have no impact on the costs or revenues of state government.

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 28-04



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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY **Contractor Licensing Board**

RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **28-04**

RULE NAME **Contractor Licensing Board**

CITE AUTHORITY **W. Va. Code §21-11-10(c)**

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0	0	0
PERSONAL SERVICES	0	0	0
CURRENT EXPENSES	0	0	0
REPAIRS AND ALTERATIONS	0	0	0
ASSETS	0	0	0
OTHER	0	0	0
ESTIMATED TOTAL REVENUES	0	0	0

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 28-04



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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY **Contractor Licensing Board**

RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **28-04**

RULE NAME **Contractor Licensing Board**

CITE AUTHORITY **W. Va. Code §21-11-10(c)**

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

N/A

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 28-04



Rule Id: 16428



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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 4)

AGENCY **Contractor Licensing Board**

RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **28-04**

RULE NAME **Contractor Licensing Board**

CITE AUTHORITY **W. Va. Code §21-11-10(c)**

PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND/OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 28-04



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FORM 12 – BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY **Contractor Licensing Board**

RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **28-04**

RULE NAME **Contractor Licensing Board**

CITE AUTHORITY **W. Va. Code §21-11-10(c)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

Many of the disciplinary problems brought before the Contractor Licensing Board concern licensees performing non-commercial and residential work.

The current rule is from 2002. The Board is updating and revising the procedural rule to provide a more comprehensive standard form contract intended to assist licensees in addressing matters with a customer before work begins. The contract form is optional for use by licensees.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 28-04



Rule Id: 16428



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TITLE 28
PROCEDURAL RULE
WEST VIRGINIA CONTRACTOR LICENSING BOARD

SERIES 4
WRITTEN CONTRACTS FOR SERVICES

§28-4-1. General.

1.1. Scope. -- ~~This procedural rule establishes the minimum requirements for written contracts as required under the W. Va. Code §§21-11 et seq. the West Virginia Contractor Licensing Act that a licensee must include in a written contract for construction projects with an aggregate value of \$10,000.00 or more. The intent of this written contract requirement is to provide an element of protection to consumers who utilize the services of contractors licensed and regulated by the West Virginia Contractor Licensing Board. Pursuant to its responsibilities as set forth in W. Va. Code § 21-11-10(c), the Board has adopted a written contract form, attached to this rule as Appendix A, which can be downloaded from the Division's website. A licensee may modify the provisions of the contract form as needed, as long as the modified contract includes the required provisions set forth in Section 4.1 of this rule.~~

1.2. Authority. -- W. Va. Code §§21-11-10(c).

1.3. Filing Date. -- ~~July 19, 2002.~~

1.4. Effective Date. -- ~~October 1, 2002.~~

§28-4-2. Definitions.

~~Except as otherwise stated in this section, all~~ In addition to the definitions in this section, the definitions ~~contained~~ in W. Va. Code §21-11-3 are incorporated herein by reference.

2.1. "Act" means the West Virginia Contractor Licensing Act, W. Va. Code § 21-11-1, *et seq.*

2.2. "Aggregate value" means the total combined cost of materials and labor for an entire construction project, including the cost of materials and labor furnished by a licensee and subcontractors, and the cost of materials furnished by the owner, if any.

2.3. "Board" means the West Virginia Contractor Licensing Board or its authorized representatives.

2.4. "Days" means business days unless otherwise stated.

2.5. "Division" means the West Virginia Division of Labor or its authorized representatives.

2.6. "Licensee" means a contractor who has been issued a valid contractor license pursuant to the provisions of the Act. As used in this rule, "licensee" also means the principal or general contractor.

2.7. "Owner" means the person for whom the licensee performs construction work.

§28-4-3. Written Contracts Required.

~~Effective the first day of October, two thousand two, no person licensed under~~ Pursuant to the

provisions of W. Va. Code §§~~21-11 et seq.~~ § 21-11-10(b), prior to ~~may performing contracting construction work on a project with of an aggregate value of ten thousand dollars~~ \$10,000.00 or more, including materials and labor, without a licensee shall have a written contract; setting forth a description and cost of the work to be performed, signed by the licensee and the person for whom the work is to be performed with an owner and with any subcontractor that the licensee hires to work on the project.

§28-4-4. Form and Contract Form; Required Content Contract Provisions Required; Required Change Orders; Suggested Contract Provisions.

4.1. ~~While There shall be~~ there is no required format for a written ~~contracts. contract.~~ contract. Provided however, All the written contract documents must comply with shall include at least the following provisions: the minimum content requirements defined in subsection two of section of this section. A standard contract form shall be available upon request from the Division of Labor's contractor licensing section. This standard form, when properly completed and executed, shall be deemed to comply with the requirements of this rule.

4.2. ~~Every written contract executed as required by W. Va. Code §§21-11-10 et seq., shall contain, at the minimum, the following elements:~~

- a. ~~4.1.a. The consumer's name and address~~ The licensee's name and business address;
- b. ~~4.1.b. The contractor's name and address~~ The owner's name, address, and project address or location if different from the owner's address;
- c. ~~The contractor's West Virginia Contractor License number;~~
- d. ~~The address of the property where the project is intended to occur if other than the consumer's address;~~
- e. ~~4.1.c. The nature, general description and scope of the project~~ A description of the work to be performed by the licensee, including a description of the materials to be furnished by the licensee;
- 4.1.d. A description of the work to be performed by any subcontractors the licensee anticipates hiring, including a description of the materials to be furnished by the subcontractors;
- 4.1.e. A description of materials the owner intends to furnish, if any;
- 4.1.f. The total cost of the project and the terms of payment, including specification of a payment schedule;
- f. ~~4.1.g. Approximate starting date~~ The project start and completion dates;
- 4.1.h. A statement requiring the licensee and owner to sign and date a written authorization for any additions, modifications, or changes to the description of work to be performed, to the contract price, or to any other changes to the terms and conditions of the contract;
- g. ~~Approximate completion date;~~
- h. ~~The total cost of the contract and payment arrangements;~~

~~i. A plainly worded offer and a clear and unconditional acceptance of that offer;~~

4.1.i. Statement that licensee will enter into a written contract with any subcontractor that licensee hires to work on the project, and that the written contract between licensee and subcontractor will include all relevant provisions, terms and conditions as the contract between licensee and owner;

4.1.j. Licensee's contractor license number and classifications;

4.1.k. A statement that all employees on the project, including employees of any subcontractor, are legally authorized to work in the United States;

4.1.l. Licensee's workers' compensation policy number and unemployment insurance account number;

4.1.m. Description of any additional provisions, terms or conditions of the contract;

~~j. 4.1.n. Signature of the consumer and date signed~~ Authorized licensee's signature, printed name, title, date, taxpayer ID number, business telephone number and email address; and

~~k. 4.1.o. Signature of the contractor and date signed~~ Authorized owner signature, printed name, title, date, email address and telephone number.

4.2. The Board recommends that a licensee include at least the following additional provisions in a written contract:

4.2.a. If any permits or licenses are required for the project, specification of who is responsible for obtaining and paying for them;

4.2.b. A description of licensee's warranties, if any;

4.2.c. A statement regarding licensee's and owner's responsibilities with regard to liens and lien waivers;

4.2.d. A description of licensee's responsibilities for construction site maintenance, storage of equipment, materials and supplies, normal hours of work, and hours of work for loud construction activities; and

4.2.e. A description of licensee's responsibilities with regard to any subcontractors that are hired by licensee.

~~4.3. An addendum may be added to a written contract after the execution date of the original contract. The addendum must make specific reference to the original contract document and be signed and dated by both the consumer and the contractor.~~

§28-4-5. Licensee's Failure to Execute a Written Contracts as Required; Penalties.

~~5.1. Any licensed contractor licensee who fails to execute a written contract as required by W. Va. §§21-11-10 et seq. §21-11-10(b) and this rule, shall~~ may be subject to disciplinary action by the board Board as provided for in W. Va. Code §21-11-14.

~~5.2. The board has the power and authority to impose the following disciplinary actions:~~

~~a. Permanently revoke a license;~~

~~b. Suspend a license for a specified period;~~

~~c. Censure or reprimand a licensee;~~

~~d. Impose limitations or conditions on the professional practice of a licensee;~~

~~e. Impose requirements for remedial professional education to correct deficiencies in education, training and skill of a licensee;~~

~~f. Impose a probationary period requiring a licensee to report regularly to the board on matters related to the grounds for probation, the board may withdraw probationary status if the deficiencies that require the sanction are remedied, and~~

~~g. Order a contractor who has been found, after hearing, to have violated any provision of W. Va. Code §§21-11 et seq. or its applicable rules to provide, as a condition of licensure, assurance of financial responsibility. The form of financial assurance may include, but is not limited to, a surety bond, a cash bond, a certificate of deposit, an irrevocable letter of credit or performance insurance.~~

§28-4-6. Licensee's Obligation to Provide the Board or Division With a Copy Proof of a Written Contract Required.

~~6.1. After a consumer has filed a complaint against a licensed contractor, the board may order the contractor to submit a copy of the written contract covering the project in question.~~

6.1. Upon request by the Board or Division, a licensee shall submit copies of its written contracts.

6.2. If a contractor licensee fails to submit to the board a copy copies of a the requested contracts complying with the requirements of this rule within ten 10 days of the order for such submission Board's or Division's request, the contractor shall licensee may be subject to the penalties described in section five of this rule disciplinary action by the Board as set forth in W. Va. Code §21-11-14.

§28-4-7. Enforcement Exemption of Manufactured Housing Construction and Safety Standards Board Licensees For the Initial Installation of a HUD-Code Manufactured Home.

~~The enforcement of the provisions of this rule shall be vested with the West Virginia Contractor Licensing Board and the Division of Labor. Provided however, That persons licensed by the The West Virginia Manufactured Housing Construction and Safety Standards Board licensees and regulated under the provisions of W. Va. Code §§21-9-1 et seq. and its applicable legislative rule [42 CSR 19], shall be required to adhere to are exempt from compliance with the this Board's written contract requirements for the initial installation of a HUD-Code manufactured home. of that Board.~~

APPENDIX A - CONSTRUCTION CONTRACT

This contract is made between _____, Licensee, whose
Printed Name of Licensee
 principal place of business is located at _____
Address

and _____, Owner, whose address is _____
Printed Name of Owner Address

1. Work or Project Location (if different from Owner's address above).

Street Address or Location

County Town or City

2. Services to Be Performed. Describe in detail and attach additional pages if needed.

2A. Licensee will furnish the following materials and equipment and perform the following work:

2B. Licensee, at Licensee's discretion, anticipates hiring subcontractors to furnish the following materials and equipment and perform the following work:

2C. If the Owner furnishes materials the following conditions will apply:

2D. Licensee and Owner agree that any additions or modifications to the description of services to be performed must be authorized by a written change order or written addendum, and signed and dated by Licensee and Owner.

3. Contract Price.

3A. Licensee and Owner agree that the total cost of materials and work set forth in Article 2A and 2B above is \$_____,
Dollar Amount Dollar Amount Written Out
_____.

3B. Licensee and Owner agree that any additions or deductions from this contract price must be authorized by a written change order or written addendum, and signed and dated by Licensee and Owner.

4. Terms of Payment.

Licensee and Owner agree to the following payment schedule: _____

_____.

5. Project Start Date and Completion Date.

5A. Licensee will start work on_____, and will complete work by_____
Date Date

5B. Licensee will promptly notify Owner of any changes to the start or completion date.

6. Permits and Approvals.

Licensee will be responsible for determining which permits are necessary for performing the specified work, and for obtaining and paying for all required permits.

7. Licensee's Warranties.

7A. Licensee warrants that all work will be completed in a good workman-like manner and in compliance with building codes or other applicable laws or ordinances.

7B. Licensee agrees to correct any defective work at no cost to Owner.

7C. Licensee's warranty under this section will be in effect for one year from the date of completion of the work.

8. Liens and Lien Waivers.

8A. Licensee represents and warrants that there will be no liens for labor, materials, equipment or appliances against the work covered by this Contract.

8B. Contingent upon payment from Owner, Licensee agrees to hold Owner free and harmless from and against any all liens and claims for labor, materials, equipment, services, or appliances furnished or used in connection with the work covered by this Contract.

8C. To protect Owner against liens being filed by Licensee, subcontractors, and material or equipment

suppliers, Licensee agrees that final payment under Section 4 will be withheld by Owner until Licensee presents Owner with lien waivers, lien releases, or receipts acknowledging full payment from each subcontractor and materials and equipment suppliers.

9. Site Maintenance.

9A. Licensee will remove all construction debris from the construction site and leave the premises in "broom clean" condition.

9B. Licensee will perform the work covered by this Contract during the following hours:

_____.

9C. Licensee agrees that disruptively loud construction activities will be performed only at the following times: _____.

9D. At the end of each day's work, Licensee's equipment, materials and supplies will be stored in the following location(s): _____

_____.

10. Subcontractors; Written Contract Between Licensee and Subcontractor.

10A. If Licensee engages subcontractors to perform services as set forth in Section 2B, Licensee will remain ultimately responsible for making sure that all work under this Contract is completed properly.

10B. Licensee warrants that Licensee is responsible for paying any subcontractor engaged to work on this project.

10C. Licensee warrants that any subcontractor engaged to perform work on any part of the project has a current West Virginia Contractor License and is licensed in the proper classification(s) for the scope of work to be performed by the subcontractor.

10D. Licensee warrants that Licensee will enter into a written contract with any subcontractor engaged to perform work under this Contract and that the contract between the Licensee and a subcontractor will include all the relevant terms, provisions and conditions as this Contract between the Licensee and Owner.

11. Compliance with Federal, State and Local Laws.

11A. Licensee represents and warrants that Licensee is in compliance with all federal, state and local laws applicable to the work to be performed under this Contract.

11B. Licensee warrants that Licensee has a current West Virginia Contractor License and is licensed to perform work in the following classification(s) under the following contractor license number:

_____.

Indicate the classification(s) and Contractor License number

_____.

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11C. Licensee warrants that all employees on the project, including employees of any subcontractor, are legally authorized to work in the United States.

11D. Licensee warrants that Licensee's employees are covered by the following workers' compensation policy and unemployment insurance account:

Workers' Compensation Policy Number

Unemployment Insurance Account Number and State (if other than West Virginia)

12. Additional Provisions, Terms and Conditions.

Licensee and Owner agree to the following additional provisions, terms and conditions:

By their signatures below, the Licensee and Owner agree to be bound by the terms and conditions of this Contract.

The Licensee and Owner shall execute two (2) original Contracts, and two (2) original change orders or addenda, if any, so that the Licensee and the Owner shall each have a signed original Contract, change order or addendum.

LICENSEE:

Authorized Signature

Printed Name

Title

Date

Taxpayer ID Number

Business Telephone

Email Address

OWNER:

Authorized Signature

Printed Name

Title

Date

Email Address

Telephone