

1 21 NCAC 12.0208 has been amended with changes as published in 24:06 NCR 246-47 as follows:

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3 **21 NCAC 12.0208 CONSTRUCTION MANAGEMENT**

4 (a) The term “undertakes to superintend or manage” as used in G.S. §87-1 to describe a person, firm, or
5 corporation deemed to be a general contractor means that the person, firm, or corporation is responsible for
6 superintending or managing the ~~entire~~ construction of an entire project, and either contracts directly with
7 subcontractors to perform the construction for the project or is compensated for superintending or
8 managing the project based upon the cost of the project or the time taken to complete the project. ~~Such~~ The
9 person, firm, or corporation must hold a general contracting license in the classifications and limitation
10 applicable to the construction of the project.

11 (b) The term “undertakes to superintend or manage” described in Paragraph (a) of this Rule does not
12 include the following:

- 13 (1) an architect or engineer licensed in North Carolina who is supervising the execution
14 of design plans for the project owner and who does not contract directly with
15 subcontractors to perform the construction for the ~~project.~~ project; or
16 (2) subject to the conditions stated within this subparagraph and paragraph (c), any
17 person, firm, or corporation retained by an owner of real property as a consultant,
18 agent, or advisor to perform development-related functions, including :

19 (A) assisting with site planning and design,

20 (B) formulating a development scheme,

21 (C) obtaining zoning and other entitlements,

22 (D) tenant selection and negotiation,

23 (E) interfacing and negotiating with the general contractor, engineer,
24 architect, other construction and design professionals and other
25 development consultants with whom the land owner separately
26 contracts, including, negotiating contracts on the owner’s
27 behalf, assisting with scheduling issues, ensuring that any disputes
28 between such parties are resolved to the owner’s satisfaction, and
29 otherwise ensuring that such parties are proceeding in an efficient,
30 coordinated manner to complete the project,

31 (F) providing cost estimates and budgeting,

32 (G) monitoring the progress of development activities performed by
33 other parties,

34 (H) arranging and negotiating governmental incentives and

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entitlements, and

(I) selecting and sequencing sites for development.

(c) The exclusions set forth in subparagraph (b)(2) do not apply, however, unless the following conditions are satisfied:

- (1) the owner has retained a licensed general contractor or licensed general contractors to construct the entire project or to directly superintend and manage all construction work in which the person, firm or corporation has any involvement and which would otherwise require the use of a licensed general contractor, and
- (2) the use of the person, firm or corporation will not impair the general contractor's ability to communicate directly with the owner and to verify the owner's informed consent and ratification of the directions and decisions made by the person, firm or corporation to the extent that such directions or decisions affect the construction activities otherwise requiring the use of a licensed general contractor. For the purposes of this subparagraph, the general contractor is entitled to make a written demand for written verification from the owner of any directions given or decisions made by such a person, firm or corporation on the owner's behalf. In that regard, if the general contractor delivers a written request directly to the owner asking that the owner confirm in writing that the owner desires that the general contractor perform consistent with a direction or decision made by such person, firm or corporation:

- (A) the general contractor shall not be obligated to follow such direction or decision in question until such time as the owner provides written verification of the direction or decision; and
- (B) if the third party person, firm or corporation whose direction or decision is being questioned by the general contractor attempts to itself provide the confirmation requested from the owner by the general contractor as provided above, such person, firm or corporation shall be deemed to be "undertaking to superintend or manage" as described in Paragraph (a) of this Rule.

*History Note: Authority G.S. 87-1; 87-4;
Eff. May 1, 1995;
Amended Eff. April 1, 2010.*