

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/consumers. For convenience, sections of relevant New York State Law and/or New York City Law and Rules are included in this handout. The New York City Law and Rules are current as of January 2009.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in the handout provided in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

NEW YORK CITY ADMINISTRATIVE CODE
TITLE 20: CONSUMER AFFAIRS
CHAPTER 5: UNFAIR TRADE PRACTICES
***SUBCHAPTER 14**
IMMIGRATION ASSISTANCE SERVICES

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§ 20-770 **Definitions.** For the purpose of this subchapter, the following terms have the following meanings:

a. "Immigration assistance service" means providing any form of assistance, in the city of New York, for a fee or other compensation, to persons who have come, or plan to come to the United States from a foreign country, or their representatives, in relation to any proceeding, filing or action affecting the non-immigrant, immigrant or citizenship status of a person, which arises under the immigration and nationality law, executive order or presidential proclamation, or which arises under actions or regulations of the United States citizenship and immigration services, the United States department of labor, or the United States department of state.

b. "Provider" means any person, including but not limited to a corporation, partnership, limited liability company, sole proprietorship or natural person, that provides immigration assistance services, but shall not include:

1. any person who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth or the District of Columbia, and is not

under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law, or any person working directly under the supervision of the person admitted;

2. any tax-exempt, not-for-profit organization that provides immigration assistance services without a fee or other payment from individuals or at nominal fees as defined by the federal board of immigration appeals and any employee of such organization acting within the scope of his or her employment;

3. any organization recognized by the federal board of immigration appeals that provides immigration assistance services via representatives accredited by such board to appear before the bureau of citizenship and immigration services and/or executive office for immigration review, that does not charge a fee or charges nominal fees as defined by the board of immigration appeals;

4. any authorized agency under subdivision ten of section three hundred seventy-one of the New York state social services law and the employees of such organization when acting within the scope of such employment;

5. any elected official who, acting within the scope of his or her official capacity, without a fee or other payment makes inquiries on behalf of an individual to the United States citizenship and immigration services, the United States department of labor, the United States department of state or any other government authority responsible for administering any program, law or regulation affecting the non-immigrant, immigrant or citizenship status of a person; or

6. any employee of the office of the mayor or an executive agency of the city of New York who, acting within the scope of his or her capacity as an employee of the office of the mayor or an executive agency of the city of New York, without a fee or other payment makes inquires on behalf of an individual to the United States citizenship and immigration services, the United States department of labor, the United States department of state or any other government authority responsible for administering any program, law or regulation affecting the non-immigrant, immigrant or citizenship status of a person.

§ 20–771 **Prohibited conduct.** In the course of providing immigration assistance services, no provider may:

a. State or imply that the person can or will obtain special favors from or has special influence with the bureau of citizenship and immigration services or any other governmental entity, or threaten to report the client to immigration or other authorities or undermine in any way the client's immigration status or attempt to secure lawful status;

b. Demand or retain any fees or compensation for services not performed, or costs that are not actually incurred;

c. Fail to provide a customer with copies of documents filed with a governmental entity or refuse to return original documents supplied by, prepared on behalf of, or paid for by the customer, upon the request of the customer, or upon termination of the contract. Original documents must be returned promptly upon request and upon cancellation of the contract, even if there is a fee dispute between the immigration assistance provider and the customer;

d. Assume, use or advertise the title of lawyer or attorney at law, or equivalent terms in the English language or any other language, or represent or advertise other titles or credentials, including but not limited to "Notary Public", "Accredited Representative of

the Board of Immigration Appeals" or "Immigration Consultant," that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter; provided that a notary public licensed by the secretary of state may use the term "Notary Public";

e. Give any legal advice concerning an immigration matter or otherwise engage in the practice of law;

f. Make any guarantee or promise to a customer, unless there is a basis in fact for such representation, and the guarantee or promise is in writing;

g. Represent that a fee may be charged, or charge a fee for the distribution, provision or submission of any official document or form issued or promulgated by a state or federal governmental entity, or for a referral of the customer to another person or entity that is qualified to provide services or assistance which the immigration assistance service provider will not provide;

h. Disclose any information to, or file any forms or documents with, immigration or other authorities without the knowledge or consent of the customer.

§ 20-772 **Written Agreement.** No immigration assistance services shall be provided until the customer has executed a written contract with the provider who will provide such services. The contract shall be in a language understood by the customer, either alone or with the assistance of an available interpreter, and, if that language is not English, an English language version of the contract must also be provided. A copy of the contract shall be provided to the customer upon the customer's execution of the contract. The customer has the right to cancel the contract within three business days after his or her execution of the contract, without fee or penalty. The right to cancel the contract within three days without payment of any fee may be waived when services must be provided immediately to avoid a forfeiture of eligibility or other loss of rights or privileges, and the customer furnishes the provider with a separate dated and signed statement, by the customer or his or her representative, describing the need for services to be provided within three days and expressly acknowledging and waiving the right to cancel the contract within three days. The contract may be cancelled at any time after execution. If the contract is cancelled after three days, or within three days if the right to cancel without fee has been waived, the provider may retain fees for services rendered, and any additional amounts actually expended on behalf of the customer. All other amounts must be returned to the customer within fifteen days after cancellation. The written contract shall be in plain language, in at least twelve point type and shall include the following:

1. The name, address and telephone number of the provider.

2. Itemization of all services to be provided to the customer, as well as the fees and costs to be charged to the customer.

3. A statement that original documents required to be submitted in connection with an application made to the federal bureau of citizenship and immigration services or for other certifications, benefits or services provided by government may not be retained by the provider for any reason, including payment of fees or costs.

4. A statement that the provider shall give the customer a copy of each document filed with a governmental entity.

5. A statement that the customer is not required to obtain supporting documents through the provider, but may obtain such documents himself or herself.

6. The statement: "You have three (3) business days to cancel this contract. Notice of cancellation must be in writing, signed by you and mailed by registered or certified United States mail to (specify address). If you cancel this contract within three days, you will get back your documents and any fees that you paid."

7. A statement that the provider has financial surety in effect for the benefit of any customer in the event that the customer is owed a refund, or is damaged by the actions of the provider, together with the name, address and telephone number of the surety.

8. The statement: "The individual providing assistance to you under this contract is not an attorney licensed to practice law or accredited by the board of immigration appeals to provide representation to you before the bureau of citizenship and immigration services, the department of labor, the department of state or any immigration authorities and may not give legal advice or accept fees for legal advice."

9. The statement: "The individual providing assistance to you under this contract is prohibited from disclosing any information or filing any forms or documents with immigration or other authorities without your knowledge and consent."

10. The statement: "A copy of all forms completed and documents accompanying the forms shall be kept by the service provider for three years. A copy of the customer's file shall be provided to the client on demand and without fee."

§ 20-773 **Posting of Signs.** a. A provider must post signs at every location where that provider meets with customers that states the following: "THE INDIVIDUAL PROVIDING ASSISTANCE TO YOU UNDER THIS CONTRACT IS NOT AN ATTORNEY LICENSED TO PRACTICE LAW OR ACCREDITED BY THE BOARD OF IMMIGRATION APPEALS TO PROVIDE REPRESENTATION TO YOU BEFORE THE BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES, THE DEPARTMENT OF LABOR, THE DEPARTMENT OF STATE OR ANY IMMIGRATION AUTHORITIES AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." A separate sign shall be posted in a location visible to customers in conspicuous size type and which contains the schedule of fees for services offered and the statement: "YOU MAY CANCEL ANY CONTRACT WITHIN 3 BUSINESS DAYS AND GET BACK YOUR DOCUMENTS AND ANY MONEY YOU PAID."

b. Signs required by this section must be at least 11 inches by 17 inches and must be posted in a conspicuous location in English and in every other language in which immigration assistance services are provided at the location.

§ 20-774 **Advertisements.** a. Every provider who advertises immigration assistance services by signs, pamphlets, newspapers or any other means shall post or otherwise include with the advertisement a notice in English and in the language in which the advertisement appears. The notice must be of a conspicuous size and must state: "The individual providing assistance to you is not an attorney licensed to practice law or accredited by the board of immigration appeals to provide representation to you before the bureau of citizenship and immigration services, the department of labor, the department of state or any immigration authorities and may not give legal advice or accept fees for legal advice."

b. No advertisement for immigration assistance services may expressly or implicitly guarantee any particular government action, including but not limited to the granting of residency or citizenship status.

§ 20–775 **Document Retention.** Every provider shall retain copies of all documents prepared or obtained in connection with a customer's request for assistance for a period of three years after a written contract is executed by the provider and the customer, whether or not such contract is subsequently cancelled.

§ 20–776 **Surety.** Unless otherwise required by New York State law, every provider must maintain in full force and effect a bond, contract of indemnity, or irrevocable letter of credit, payable to the people of the city of New York, in the principal amount of fifty thousand dollars. Such surety shall be for the benefit of any person who does not receive a refund of fees from the provider to which he or she is entitled, or is otherwise injured by the provider. The Commissioner on behalf of the person or the person in his or her own name may maintain an action against the provider and the surety.

§ 20–777 **Penalties.** a. (1) Criminal Penalties. Any provider who violates any provision of this subchapter shall be guilty of a class A misdemeanor.

(2) Civil Penalties. Any provider of immigration assistance services who violates any provision of this subchapter or any rule or regulation promulgated hereunder shall be liable for a civil penalty of not less than two hundred fifty dollars nor more than two thousand five hundred dollars for the first violation and for each succeeding violation a civil penalty of not less than five hundred dollars nor more than five thousand dollars.

b. A proceeding to recover any civil penalty authorized pursuant to the provisions of this section shall be commenced by the service of a notice of violation that shall be returnable to the administrative tribunal of the department of consumer affairs.

§ 20–778 **Civil Cause of Action.** Any person claiming to be injured by the failure of a provider of immigration assistance services to comply with the provisions of this subchapter shall have a cause of action against such provider of immigration assistance services in any court of competent jurisdiction for any or all of the following relief:

- a. compensatory and punitive damages;
- b. injunctive and declaratory relief;
- c. attorney's fees and costs; and
- d. such other relief as a court deems appropriate.

§ 20–779 **Rules.** The commissioner may promulgate such rules and regulations as are necessary for the purposes of implementing and carrying out the provisions of this subchapter. Upon a finding by the commissioner that the requirements of state law applicable to providers of immigration services are substantially the same as the requirements of this subchapter, compliance with state law shall be deemed to be compliance with the requirements of this subchapter.

§ 20–780* **Severability.** If any section, subsection, sentence, clause, phrase or other portion of this subchapter is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which shall continue in full force and effect.

* Note that there are two subchapter 14s. This subchapter 14, added L.L. 3/1/2004 § 2, effective October 10, 2004, governs immigration assistance service. The City Council's Declaration of legislative findings and intent for this subchapter 14 follows:

Persons who assist individuals with immigration matters have a significant impact on the ability of their clients to live and work within the United States and to establish and maintain stable families and business relationships. Given the size of New York City's immigrant community, providers of immigration assistance services have a significant impact on cultural, social and economic life in this city. Presently, minimal regulation of persons who provide immigration assistance services leaves persons who require assistance with immigration matters vulnerable to abuse and unscrupulous practices. The purpose of this legislation is to give immigrants a clear understanding of the work to be performed by providers of immigration assistance services and to promote honesty and fair dealing among providers of immigration assistance services.

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RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 5: UNFAIR TRADE PRACTICES
***SUBCHAPTER N**
IMMIGRATION CONSULTANTS

- §5-260 Location and Availability of Records.**
- §5-261 Requirements for Written Agreements.**
- §5-262 Completing Form Preparation Declaration.**
- §5-263 Requirements Concerning Posting of Signs.**
- §5-264 Disclosure of Surety Maintained by Provider.**

§5-260 Location and Availability of Records.

All records required to be retained shall be kept at the provider's principal place of business and shall be made available for inspection during normal business hours to the Commissioner or his or her duly authorized representative.

§5-261 Requirements for Written Agreements.

The statements required to be included in written agreements pursuant to §20-772 of the New York City Administrative Code shall all be included together in a box that is set off from the rest of the text of the written agreement. The text of the required statements shall be in at least twelve (12) point type. The box containing the required statements shall appear immediately above the place for the consumer's signature.

§5-262 Completing Form Preparation Declaration.

Every immigration service consultant shall complete and sign the form preparation declaration contained on any form that was directly or indirectly prepared by such consultant as part of the service for which the consumer is charged a fee under the written agreement required by §20-772.

§5-263 Requirements Concerning Posting of Signs.

- (a) The text in the signs required to be posted by §20-773 of the New York City Administrative Code shall be in type large enough to be clearly legible and visible from where a provider or its agents transact business with a consumer.

- (b) **Every provider shall conspicuously post where he or she transacts business with a consumer a sign, at least 11 inches by 17 inches with letters at least 1-inch high, reading as follows, in English and in every other language in which business is transacted with consumers:

If you have a complaint about this business, contact:

The New York City Department of Consumer Affairs

(Insert the Department's current address.)

(Insert current telephone number and current web address to

which complaints may be sent within a box in bold faced type.)

Business name: (insert legal name of business).

Business address: (insert address of business).

Business phone: (insert current business phone number).

§5-264 Disclosure of Surety Maintained by Provider.

- (a) Every provider shall post a sign that shall be not less than eleven (11) inches by seventeen (17) inches in dimension stating that the provider is by law required to maintain in full force a surety in the principal amount of \$50,000.00 and the name, address and telephone number where a claim against such surety is required to be filed. Such sign shall be conspicuously displayed in the area where it will be clearly visible to consumers entering and leaving the premises.
- (b) Every provider shall also furnish to each consumer upon signing a contract the same information required to be posted on such sign. The information shall be furnished to each consumer on a separate sheet of paper in at least twelve (12) point bold faced type and in a color that contrasts sharply with the color of the paper.

*Subchapter N added City Record Mar. 7, 2005 eff. Apr. 6, 2005. Note Statement of Basis and Purpose:

Local Law No. 31 for the Year 2004 added new subchapter 14, titled "Immigration Assistance Services" to Title 20 of the New York City Administration Code to establish requirements governing the activities of immigration services providers. The law requires that immigration service providers furnish their services only under written agreements that must make certain disclosures about the services, and that providers maintain records, post sign making required disclosures, and obtain a surety bond. The law also authorizes the commissioner to adopt rules for the purpose of implementing its provisions.

To clarify for immigration providers how provisions in the law are implemented to ensure they are effectuated to achieve their purpose of informing and protecting consumers about the practices and the conduct of immigration services providers, the rule designates where required records are to be maintained to enable the department to inspect them as necessary to ensure compliance; requires that mandated written disclosures be segregated and prominently displayed near the consumer's signature to ensure consumers would see them when signing the agreement; designates the size of the sign and print to be used to ensure the required disclosures would be visible to consumers where they transact business with consultants; specifies that consultant complete and sign form preparation declaration contained on any form prepared as part of the service provided pursuant to their written contract with consumers; and mandates

that the surety immigration service providers are required to maintain is identified to ensure consumers would know that the required surety is in place and who is providing it to enable them file claims for damage against the correct party.

**Subchapter N Section 5-263(b) added City Record Oct. 29, 2008 eff. Nov. 28, 2008. Note Statement of Basis and Purpose:

Section 20-779 of the Administrative Code of the City of New York authorizes the Commissioner to adopt such rules as are necessary for the purpose of implementing and carrying out the provisions of the law governing immigration assistance services. The purpose of that legislation as expressed in the legislative findings was to give immigrants a clear understanding of the work performed by immigration assistance service providers, to promote honesty and fair dealing among providers of immigration assistance services by establishing standards of conduct, to curb abusive practices by immigration services providers and to enable the Department of Consumer Affairs to prevent abuses and assist individual harmed by the unlawful conduct of such providers.

Since the law governing immigration assistance service providers became effective October 10, 2004, the Department has conducted compliance checks that have identified 125 locations in FY 2005 and 2006 where immigration assistance service providers were operating and issued 81 notices of violation to such providers. Although the 65 percent non-compliance rate that these inspections uncovered clearly revealed a substantial probability that users of these services were subject to abuse, the Department has received only six complaints from consumers from FY 05 to the present.

The Department has concluded that a significant reason for consumers' failure to contact the Department is that they lack the information that would encourage and enable them to do so.

To ensure that consumers doing business with licensees are fully aware of their opportunity to contact the Department about complaints against such businesses, the Department requires all licensees to post signs identifying the Department as the place to contact about complaints and listing the contact information for reaching the Department.

Although immigration service providers are not required to be licensees, they required to adhere to standards of conduct that are applicable to licensees who are required to post such signs.

The Department has, therefore, concluded that it is necessary that providers of immigration services post the same signs as licensees to alert their clients where they can contact the Department about complaints to effectuate the purpose of the law to enable the Department to assist consumers harmed by providers who fail to comply with the requirements of the Local Law Number 31 of 2004 and other applicable statutes.

The amendment to §5-263 of Title 6 of the Rules of the City of New York relating to the requirements for posting signs by providers includes the same requirement for posting information about how clients can contact the Department as licensees are required to do. Since the clients of providers of immigration services are natives of other countries who may only be conversant in languages other than English, the rule also requires that providers post the information on the required sign in all the languages in which they transact business.