

DEPARTMENT OF CONSUMER AFFAIRS

NOTICE OF ADOPTION

Notice of Adoption of an Amendment to an Existing Rule Regarding Expiration Dates of Home Improvement Sales Person and Home Improvement Contractor Licenses.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer Affairs by Section 20-391 of Chapter 2, Title 20 of the Administrative Code of the City of New York and in accordance with the requirements of Section 1043 of the New York City Charter that the Department promulgates and adopts an amendment to an existing rule regarding the expiration dates of the home improvement salesperson license and the home improvement contractor license.

The rule was proposed and published on January 29, 2013. The required public hearing was held on February 28, 2013.

Material being deleted is shown below in brackets and material being be added is underlined.

RULE

Statement of Basis and Purpose

Section 20-104 (a) of the New York City Administrative Code gives the Commissioner control of all licenses issued under chapter two of Title 6 of the Rules of the City of New York. Since most licensed home improvement contractors are also licensed salespeople, the Department of Consumer Affairs (DCA) is promulgating a rule that simplifies compliance for those working in the home improvement industry who hold both licenses. The rule will accomplish this by setting a single expiration date for both licenses. Specifically, this Rule amends Section 1-02 of Title 6 to change the expiration dates of Home Improvement Salesperson and Home Improvement Contractor licenses to February 28 of odd years, making both license expiration dates concurrent.. This rule change will also simplify administration of these licenses by DCA.

Section 1. Section 1-02 (a) of Title 6 of the Rules of the City of New York is hereby amended to read as follows:

§ 1-02. Term and Expiration Date of Licenses.

(a) The licenses and permits listed below shall be for a two-year term and shall expire on the dates indicated:

License

Date (years refer to calendar years)

Amusement Devices, Arcades and Operators	January 16 of Even Years (annual)
Auctioneer and Night Auction Sales	June 15 of Even Years
Billiard Room	August 1 of Odd Years
Booting of Motor Vehicles	December 31 of Odd Years
Cabaret	September 30 of Even Years
Catering Establishment	September 30 of Even Years
Debt Collection Agency	January 31 of Odd Years
Electronic or Home Appliance Service Dealers	June 30 of Even Years
Electronic Stores	December 31 of Even Years
Employment Agency	May 1 of Even Years
Garage, Parking Lot	March 31 of Odd Years
Home Improvement Contractor	<u>February 28</u> [June 30] of Odd Years
Home Improvement Salesperson	<u>February 28</u> [October 31] of Odd Years
Horsedrawn Cab	March 31 of Even Year
Horsedrawn-Cab Driver	May 31 of Even Years
Laundry	December 31 of Odd Years
Locksmith; Locksmith Apprentice	May 31 of Odd Years
Motion Picture Operators	December 31 of Even Years
Process Server	February 28 of Even Years
Products-for-the-Disabled Dealer	March 15 of Odd Years
Secondhand Dealer	July 31 of Odd Years

Sidewalk Stand	March 31 of Even Years
Sightseeing Bus	March 31 of Even Years
Sightseeing Guide	March 31 of Even Years
Storage Warehouse	April 1 of Odd Years
Towing Vehicles	December 31 of Odd Years

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2013**

No. 29

Introduced by Council Members Ignizio, Oddo, the Speaker (Council Member Quinn), Comrie, James, Koo, Williams, Wills, Lappin, Arroyo, Rose, Halloran, Ulrich and Lander

A LOCAL LAW

To amend the administrative code of the city of New York and the New York city building code, in relation to the raising and moving of a building.

Be it enacted by the Council as follows:

Section 1. Subchapter twenty-two of chapter two of title 20 of the administrative code of the city of New York is amended by adding a new section 20-402.1 to read as follows:

§ 20-402.1 Education and outreach. The department shall instruct and conduct public education on the consumer protection provisions of this subchapter, and the necessary licenses and permits that home improvement contractors must obtain to perform certain types of home improvement work, including but not limited to plumbing work, electrical work and the raising, lifting, elevating or moving of a home or building. Such instruction and public education shall be provided to home improvement contractors, homeowners and members of the public at least semiannually.

§2. Section 28-104.7 of the administrative code of the city of New York is amended by adding a new subsection 28-104.7.13 to read as follows:

§ 28-104.7.13 Identification of work involving raising or moving a building. Where the lowest above-grade floor or the lowest subgrade floor of a building is to be raised, lifted, elevated or moved, such work shall be listed on the title sheet of the construction documents as subject to

special inspection.

§3. Section 28-116.2.3 of the administrative code of the city of New York is amended by adding a new subsection 28-116.2.3.2 to read as follows:

§ 28-116.2.3.2 Special inspection of raising and moving of a building. *Where the lowest above-grade floor or the lowest subgrade floor of a building is to be raised, lifted, elevated or moved, special inspection of such work is required. The permit holder shall notify the department in writing at least 48 hours before the commencement of such work.*

§4. Section BC 1704 of the New York city building code is amended by adding a new subsection BC 1704.27 to read as follows:

1704.27 Raising and moving of a building. *A periodic special inspection shall be required where the lowest above-grade floor or the lowest subgrade floor of a building is to be raised, lifted, elevated or moved.*

§5. This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on March 13, 2013 and approved by the Mayor on April 2, 2013.

MICHAEL M. McSWEENEY, City Clerk Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 29 of 2013, Council Int. No. 1007-A of 2013) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.

NOTICE OF ADOPTION

Notice of Adoption of a Proposed Rule Amendment regarding written examinations to be taken by applicants for home improvement contractor and salesperson licenses.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer Affairs by Section 20-104(b) of Chapter 1, Title 20 of the Administrative Code of the City of New York and in accordance with the requirements of Section 1043 of the New York City Charter that the Department of Consumer Affairs promulgates and adopts a rule regarding written examinations to be taken by applicants for home improvement contractor and salesperson licenses.

This rule was proposed and published on March 9, 2012. The required public hearing was held on April 9, 2012.

This rule will take effect in 30 days.

Material being deleted is shown below in brackets and material being added is underlined.

Statement of Basis and Purpose

Pursuant to Section 20-104 (a) of the New York City Administrative Code, which gives the Commissioner the power to collect a fee for all licenses, and Section 20-104(b) of the Code , which authorizes the Commissioner to adopt such rules as are necessary and appropriate to carry out the powers and duties of the Department, the Department proposes amendments to Section 2-226 of the Rules of the City of New York relating to written examinations for home improvement contractor or salesperson licenses.

All individuals who wish to engage in the construction, repair, remodeling or addition to any land or building used as a residence in New York City must obtain a Home Improvement Contractor license from DCA. Similarly, anyone who solicits, negotiates or offers to negotiate a home improvement contract with a property owner must also obtain a Home Improvement Salesperson license. In order to ensure that the contractor and/or salesperson have an understanding of their responsibilities under the law, DCA requires new applicants to pass an examination testing this knowledge. Existing licensees are not required to retake the examination unless their license has elapsed.

The amendments are as follows:

- Section 1(a) institutes a \$50 examination fee for individuals who seek to become a licensed Home Improvement Contractor or Home Improvement Salesperson. The proposed fee is meant to defray the cost to the Department of preparing and administering

- the examination in multiple languages.
- Section 1(b) limits the number of times an individual can retake the examination with each fee payment.
 - Section 1(c) extends the amount of time in which a licensee is able to renew their license before being required to take the examination again.

RULE

Section 1. Section 2-226 of Title 6 of the Rules of the City of New York is amended to read as follows:

§2-226 Written Examination Required.

(a) Every person who applies for a license as a home improvement contractor or as a salesperson (as defined in §20-386(9) of the Administrative Code of the City of New York) [on or after April 30, 1993,] shall be required to pass an examination prior to being issued a home improvement contractor or salesperson license in accordance with §20-387 of the Administrative Code of the City of New York. Such examination shall test the knowledge of the applicant with respect to home improvement business practices, procedures and regulatory requirements and shall be offered [twice per month] regularly by the Department. The fee for taking the examination is \$50. The \$50 fee includes one subsequent retake in case the applicant fails the first examination.

(b) An applicant who fails a second examination will be required to pay a fee of \$50 for two additional opportunities to take the examination.

(c) An applicant for renewal of a license shall not be required to take an examination provided the application is submitted and payment of the license fee is made within [one (1) month] 59 days following the expiration of the term of the current license.

NOTICE OF ADOPTION

Notice of Adoption of a Proposed Rule Amendment regarding the ability of the Department of Consumer Affairs to invade the Home Improvement Business Trust Fund (the Fund) to satisfy a fine imposed on a contractor.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer Affairs by Section 20-104(b) of Chapter 1, Title 20 of the Administrative Code of the City of New York and in accordance with the requirements of Section 1043 of the New York City Charter that the Department of Consumer Affairs promulgates and adopts a rule regarding the ability of the Department of Consumer Affairs to invade the Home Improvement Business Trust Fund (the Fund) to satisfy a fine imposed on a contractor.

This rule was proposed and published on March 9, 2012. The required public hearing was held on April 9, 2012.

This rule will take effect in 30 days.

Material being deleted is shown below in brackets and material being added is underlined.

Statement of Basis and Purpose

Section 20-104(b) of the Administrative Code of the City of New York authorizes the Commissioner to adopt such rules as are necessary and appropriate to carry out the powers and duties of the Department of Consumer Affairs.

The rule amendment clarifies that the Department may invade the Home Improvement Business Trust Fund (the Fund) to satisfy a fine imposed on a contractor after a hearing, whether or not restitution is awarded to the consumer. The Commissioner's Rules require home improvement contractors either to furnish a bond to the Department or to participate in the Home Improvement Business Trust Fund. One of the purposes for this requirement is to ensure the payment of fines owed to the Department for violation of applicable laws, regulations and rules governing the licensed activity.

The proposed change makes clear that the Department can invade the Fund to collect fines owed by a participating home improvement contractor just as the Department could invade a bond for that purpose. More specifically, the amendment modifies the language of subsection 2-224(c)(1) of the Rules of the City of New York to eliminate language in subsection 2-224(c)(1)(i) that appears to limit the invasion of the trust fund to cases where there has been an award of consumer damages.

This amendment furthers the intent of section 20-115 of the Administrative Code, which states that a bond may be required for any licensed activity, including the home improvement business, to ensure compliance with the laws, regulations and rules governing the licensed activity.

RULE

Section 1. Subparagraph (i) of paragraph 1 of subdivision (c) of section 2-224 of Title 6 of the Rules of the City of New York is amended to read as follows:

(i) the Department has conducted an administrative hearing that results in a decision [finding] that a home improvement contractor is in violation of a law, ordinance or regulation enforced by the Department[; and the department or a court of competent jurisdiction has rendered a decision, judgment or an arbitration award against the contractor for damages suffered by a consumer arising out of a home improvement contract]; and

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 the New York City Licensing Law (and Rules, if enacted) are included as a handout in this packet. The 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 2: LICENSES
SUBCHAPTER 22: HOME IMPROVEMENT BUSINESS

§ 20-385 Legislative declaration. It is the purpose of the city council in enacting this subchapter to safeguard and protect the homeowner against abuses and fraudulent practices by licensing persons engaged in the home improvement, remodeling and repair business.

§ 20-386 Definitions. 1. "Persons" means an individual, firm, company, salesperson, partnership or corporation, trade group or association.

2. "Home improvement" means the construction, repair, replacement, remodeling, alteration, conversion, rehabilitation, renovation, modernization, improvement, or addition to any land or building, or that portion thereof which is used or designed to be used as a residence or dwelling place and shall include but not be limited to the construction, erection, replacement, or improvement of driveways, swimming pools, terraces, patios, landscaping, fences, porches, garages, fallout shelters, basements, and other improvements to structures or upon land which is adjacent to a dwelling house. "Home improvement" shall not include (i) the construction of a new home or building or work done by a contractor in compliance with a guarantee of completion of a new building project, (ii) the sale of goods or materials by a seller who neither arranges to perform nor performs directly or indirectly any work or labor in connection with the installation of or application of the goods or materials, (iii) residences owned by or controlled by the state or any municipal subdivision thereof, or (iv) painting or decorating of a building, residence, home or apartment, when not incidental or related to home improvement work as herein defined. Without regard to the extent of affixation, "home improvement" shall also include the installation of central heating or air conditioning systems, central vacuum cleaning systems, storm windows, awnings or communication systems.

3. "Building" means any structure containing no more than four residences or dwelling units.

4. "Owner" means any homeowner, cooperative shareholder, condominium unit owner, tenant, or any other person who orders, contracts for or purchases the home improvement services of a contractor or the person entitled to the performance of the work of a contractor pursuant to a home improvement contract.

5. "Contractor" means any person or salesperson, other than a bona fide employee of the owner, who owns, operates, maintains, conducts, controls or transacts a home improvement business and who undertakes or offers to undertake or agrees to perform any home improvement or solicits any contract therefor, whether or not such person is licensed or subject to the licensing requirements of this subchapter, and whether or not such person is a prime contractor or subcontractor with respect to the owner.

6. "Home improvement contract" means an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner, or contractor and a tenant, regardless of the number of residences or dwelling units contained in the building in which the tenant resides, provided said work is to be performed in, to or upon the residence or dwelling unit of such tenant, for the performance of a home improvement and includes all labor, services and materials to be furnished and performed thereunder.

7. "Licensee" means a person permitted to engage in the home improvement business under the provisions of this subchapter.

8. "Home improvement establishment" means any shop, establishment, place or premises where the home improvement business is transacted or carried on.

9. "Salesperson" means any individual who negotiates or offers to negotiate a home improvement contract with an owner, or solicits or otherwise endeavors to procure in person a home improvement contract from an owner on behalf of a contractor, or for himself or herself should the salesperson be also the contractor, whether or not such person is licensed or subject to the licensing requirements of this subchapter.

§ 20-387 License required. (a) No person shall solicit, canvass, sell, perform or obtain a home improvement contract as a contractor or salesperson from an owner without a license therefor.

(b) A license issued pursuant to this subchapter may not be construed to authorize the licensee to perform any particular type of work or engage in any kind of business which is reserved to qualified licensees under separate provisions of state or local law, nor shall any license or authority other than that which is issued or permitted pursuant to this subchapter authorize engaging in the home improvement business.

§ 20-388 Fees; term. 1. The fee for a license to conduct a home improvement business shall be fifty dollars and for each renewal thereof the fee shall be fifty dollars.

The fee for a salesperson's license employed by a home improvement contractor shall be twenty-five dollars and for each renewal thereof the fee shall be twenty-five dollars.

2. The fee for issuing a duplicate license or for one lost, destroyed or mutilated shall be ten dollars.

§ 20-389 License not assignable; posting required; removal. a. No license shall be assignable or transferable.

b. A license issued hereunder shall at all times be posted in a conspicuous place in the place of the licensee.

c. Every licensee shall within ten days after a change of control in ownership, or of management, or of change of address or trade name notify the commissioner of each change.

d. A duplicate license may be issued for one lost or mutilated and shall bear the word "duplicate" stamped across its face.

e. Commissioner's powers. In addition to the powers and duties elsewhere prescribed in this subchapter, the commissioner shall have power:

(1) To appoint an adequate number of assistants, inspectors and other employees as may be necessary to carry out the provisions of this subchapter, to prescribe their duties, and to fix their compensation within the amount appropriated therefor;

(2) To examine the qualifications and fitness of applicants for licenses under this subchapter;

(3) To keep record of all licenses issued, suspended or revoked;

(4) At any time to require reasonable information of an applicant or licensee, and may require the production of books of accounts, financial statements, contracts or other records which relate to the home improvement activity, qualification or compliance with this subchapter by the licensee provided, however, that said information and production of records is required of him or her pursuant to its regular business and functions under this subchapter.

§ 20-390 Application; fingerprinting. 1. An application for a license or renewal thereof shall be made to the commissioner on a form prescribed by him or her.

2. A separate license shall be required for each place of business.

3. The application shall be filed only by the actual owner of a business, shall be in writing, signed and under oath; it shall contain

the office address of the business; the name and residence address of the owner or partner and if a corporation, trade group or association, the names and resident addresses of the directors and principal officers.

4. The commissioner may require the names and residence addresses of any employees of an applicant, in addition to any other information which he or she may deem advisable.

5. Each applicant shall be over eighteen years of age and of good character.

6. The commissioner shall require that applicants for licenses issued pursuant to this subchapter be fingerprinted for the purpose of securing criminal history records from the state division of criminal justice services. The applicant shall pay a processing fee as required by the state division of criminal justice services. Fingerprints shall be taken of the individual owner if the applicant is a sole proprietorship; the general partners if the applicant is a partnership; and the officers, principals, directors, and stockholders owning more than ten percent of the outstanding stock of the corporation if the applicant is a corporation. Any person required to be fingerprinted hereunder shall furnish to the department three current passport-sized photographs of such person. Notwithstanding the foregoing, the commissioner need not require applicants for licenses required under this subchapter to be fingerprinted if criminal history records concerning such applicants are not available from the state division of criminal justice services.

7. Each application for a license to solicit, canvass, sell, perform or obtain a home improvement contract as a contractor from an owner, or for renewal thereof, filed on or after the effective date of the local law which added this subdivision shall contain such information prescribed by the commissioner as sufficient to verify the applicant's compliance with the requirements specified in subdivision four of section seventy-one-a of the lien law.

§ 20-391 Rules and regulations. The commissioner may make such rules and regulations not inconsistent with the provisions of this subchapter, as may be necessary with respect to the form and content of applications for licenses, the reception thereof, the investigation and examination of applicants and their qualifications, and the other matters incidental or appropriate to his or her powers and duties as prescribed by this subchapter and for the proper administration and enforcement of the provisions of this subchapter, and to amend or repeal any such rules and regulations.

§ 20-392 Fines; issuance, renewal, suspension and revocation of license. a. The commissioner shall have the power to impose a fine not

to exceed one thousand dollars upon a licensee and/or suspend or revoke a license or deny an application for the issuance or renewal of a license for any one or more of the following causes:

1. Fraud, misrepresentation, or bribery in securing a license.
2. The making of any false statement as to a material matter in any application for a license.
3. The person or the management personnel of the contractor are untrustworthy or not of good character.
4. The business transactions of the contractor have been or are marked by a practice of failure to timely perform or complete its contracts, or the manipulation of assets or accounts, or by fraud or bad faith, or is marked by an unwholesome method or practice of solicitation of business from owners.
5. Failure to display the license as provided in this subchapter.
6. Failure to comply with any demand or requirement lawfully made by the commissioner.
7. When an agent or employee of a licensee has been guilty of an act of omission, fraud, or misrepresentation and the licensee has approved or had knowledge thereof.
8. Violation of any provision of this subchapter or any rule or regulation adopted hereunder or for performing or attempting to perform any act prohibited by this subchapter.
9. Violation of any provision of subchapters one, two or three of title twenty-six or subchapter one of title twenty-seven of this code, or any rule adopted thereunder or for performing or attempting to perform any act prohibited by such subchapters, provided that the commissioner shall suspend or revoke the license of any licensee who continues to work in violation of a stop-work notice or order issued pursuant to section 26-118 of this code.

b. In addition to any of the powers that may be exercised by the commissioner pursuant to this subchapter and chapter one of this title, the commissioner, after notice and an opportunity to be heard, may refuse to issue or renew, or may suspend or revoke, a license required under this subchapter if the applicant or licensee, or any of its principals, officers or directors, or any of its stockholders owning more than ten percent of the outstanding stock of the corporation has been convicted of a crime which, in the judgment of the commissioner, has a direct relationship to such person's fitness or ability to perform any of the activities for which a license is required under this subchapter or has been convicted of any other crime which, in accordance with article twenty-three-a of the correction law, would provide a justification for the commissioner to refuse to issue or renew, or to suspend or revoke, such license.

§ 20-393 Prohibited acts. The following acts are prohibited:

1. Deviation from or disregard of the plans or specifications or any terms and conditions agreed to under a home improvement contract in any material respect without the written consent of the owner;
2. Making any substantial misrepresentation in the solicitation or procurement of a home improvement contract, or making any false promise of character likely to influence, persuade or induce;
3. Any fraud in the execution of, or in the material alteration of, any contract, mortgage, promissory note or other document incident to a home improvement transaction;
4. Acting as an agent for any owner or any finance or mortgage company to arrange for or to obtain an extension of credit which is used to pay for an owner's obligations under a home improvement contract, unless the instrument evidencing such owner's indebtedness complies with subdivision b of section 433.2 of title sixteen of the code of federal regulations and the licensee complies with section 771-a of the general business law;
5. Directly or indirectly publishing any advertisement relating to home improvements which contains an assertion, representation or statement of fact which is false, deceptive, or misleading, provided that any advertisement which is subject to and complies with the then existing rules, regulations or guides of the federal trade commission shall not be deemed false, deceptive or misleading; or by any means advertising or purporting to offer the general public any home improvement work with the intent not to accept contracts for the particular work or at the price which is advertised or offered to the public;
6. Wilful or deliberate disregard and violation of the building, sanitary, fire and health laws of this city;
7. Failure to notify the commissioner of any change or control in ownership, management or business name or location;
8. Conducting a home improvement business in any name other than the one in which the contractor is licensed;
9. Wilful failure to comply with any order, demand, rule, regulation or requirement made by the commissioner pursuant to provisions of this subchapter;
10. As part of or in connection with the inducement to make a home improvement contract, no person shall promise or offer to pay credit, or allow to a buyer any compensation or reward for the procurement of a home improvement contract with others;
11. Failing to perform work under a home improvement contract in a skillful and competent manner;
12. Procuring a certificate of completion from an owner prior to the actual completion of performance by the contractor under a home improvement contract;
13. Including any provision or clause in a home improvement contract whereby the owner waives or is barred from asserting any rights, claims,

defenses or remedies available to an owner under this subchapter or any rules promulgated pursuant thereto;

14. Failing to comply with subdivision four of section seventy-one-a of the lien law;

15. a. No salesperson may concurrently represent more than one contractor in the solicitation or negotiation of any one home improvement contract from an owner. The use of a contract form which fails to disclose a named contractor principal, whether for the purpose of offering the contract to various contractors other than the one the salesperson purported to represent in negotiation or otherwise, is prohibited. No salesperson may be authorized to select a prime contractor on behalf of the owner.

b. No salesperson shall accept or pay any compensation of any kind, for or on account of a home improvement transaction, from or for any person other than the contractor whom he or she represents with respect to the transaction.

16. a. As a part of or in connection with the inducement to enter any home improvement contract, no person shall promise or offer to pay, credit, or allow to any owner, compensation or reward for the procurement or placing of home improvements business with others.

b. No contractor or salesperson shall offer, deliver, pay, credit or allow to the owner any gift, bonus award or merchandise, trading stamps, or cash loan as an inducement to enter a home improvement contract.

c. A contractor or salesperson may give tangible items to prospective customers for advertising or sales promotion purposes where the gift is not conditioned upon obtaining a contract for home improvement work; provided no such item shall exceed a cost value of two dollars and fifty cents and no owner and/or other person shall receive more than one such item in connection with any one transaction.

17. Notwithstanding any other provisions of this section, no person licensed under this subchapter shall, in connection with any home repair or home improvement, act as an agent for, or advertise, promote or arrange for the services of a lender or its affiliate to secure a home loan or a home improvement loan for or on behalf of an owner.

18. No contractor shall receive payment from the proceeds of a home improvement loan except by an instrument payable solely to the borrower or at the election of the borrower, through a third party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender and the contractor prior to disbursement.

§ 20-394 Waiver. No acts, agreements or statements of an owner under a home improvement contract shall constitute a waiver of any provisions of this subchapter intended for the benefit or protection of the owner.

§ 20-394.1 Right of owner to cancel. A licensee shall furnish a notice to the owner that, in addition to any other right to revoke an offer, the owner may cancel a home improvement contract until midnight of the third business day after the day on which the owner has signed an agreement or offer to purchase relating to such contract or until midnight of the third business day after the day on which the owner receives the notice of his or her right to cancel, whichever occurs later. Cancellation occurs when written notice of cancellation is given to the home improvement contractor. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid. Notice of cancellation shall be sufficient if it indicates the intention of the owner not to be bound by such home improvement contract or offer to purchase relating to such contract. Notwithstanding the foregoing, this paragraph shall not apply to a transaction in which the owner has initiated the contact and the home improvement is needed to meet a bona fide emergency of the owner, and the owner furnishes the home improvement contractor with a separate dated and signed personal statement in the owner's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the home improvement contract within three business days.

§ 20-395 Duty to furnish estimate. A home improvement contractor or any salesperson, employee or agent of such contractor shall affirmatively disclose that an estimate in writing of the materials and labor necessary for a specific home improvement job is available to any consumer. Upon request, such contractor shall make and furnish to the consumer such estimate. A reasonable fee may be charged for the estimate, which fee shall be disclosed to the consumer prior to the furnishing of the estimate and shall be itemized and reflected in the total estimated contract price.

§ 20-396 False or fraudulent representation; damages. a. Any contractor, canvasser or seller of home improvements who shall knowingly make any false or fraudulent representations or statements or who makes or causes any such statements to be made in respect to the character of any sale, or the party authorizing the same, or as to the quality, condition, or value of any property offered by him or her for sale, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars.

b. Any person who is induced to contract for home improvements in reliance on false or fraudulent representations or statements knowingly made, may sue and recover from such home improvement contractor or

solicitor a penalty of five hundred dollars in addition to any damages sustained by him or her by reason of such statements or representations made by the contractor or by his or her agents or employees.

§ 20-397 Exceptions. No contractor's license shall be required in the following instances:

1. An individual who performs labor or services for a contractor for wages or salary.
2. A plumber, electrician, architect, professional engineer, or any other such person who is required by state or city law to attain standards of competency or experience as a prerequisite to engaging in such craft or profession, or any person required to be licensed pursuant to article six-D of the general business law to engage in the business of installing, servicing, or maintaining security or fire alarm systems, and who is acting exclusively within the scope of the craft, profession or business for which he or she is currently licensed pursuant to such other law.
3. Any retail clerk, clerical, administrative, or other employee of a licensed contractor, as to a transaction on the premises of the contractor.
4. This subchapter shall not apply to or affect the validity of a home improvement contract otherwise within the purview of this subchapter which is made prior to October first, nineteen hundred sixty-eight.
5. Any home improvement, where the aggregate contract price for all labor materials and other items is less than two hundred dollars. This exemption does not apply where the work is only part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than two hundred dollars for the purpose of evasion of this provision or otherwise.

§ 20-398 Power to investigate. If the commissioner upon reasonable cause should believe that any licensee or any other person has violated any of the provisions of this subchapter or any other law, relating to a home improvement business, he or she shall have the power to make such investigation as he or she shall deem necessary, and to the extent necessary for this purpose, he or she may examine such licensee or any other persons and shall have the power to compel the production of all relevant books, records, accounts, documents or other records.

§ 20-399 Hearings on charges; decision. No license shall be suspended or revoked nor fine imposed until after a hearing had before an officer or employee of the department designated for such purpose by the

commissioner upon notice to the licensee of at least ten days. The notice shall be served either personally or by first-class mail to the licensee at his or her last known address and shall state the date and place of the hearing and set forth the ground or grounds constituting the charges against the licensee. The licensee shall be heard in his or her defense either in person or by counsel and may produce witnesses and testify in his or her behalf. A stenographic or electronic record of the hearing shall be made and preserved. The hearing may be adjourned from time to time. The person conducting the hearing shall make a written report of his or her findings and a recommendation to the commissioner for a decision. The commissioner shall review such findings and the recommendation and, after due deliberation, shall issue an order accepting, modifying or rejecting such recommendation and dismissing the charges or suspending or revoking the license. For the purpose of this subchapter, the commissioner or any officer or employee of the department designated by him or her may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents deemed pertinent to the subject of investigation.

§ 20-400 Judicial review. The action of the commissioner in suspending, revoking or refusing to issue or renew a license may be reviewed by a proceeding brought under and pursuant to article seventy-eight of the civil practice law and rules.

§ 20-401 Violations and penalties. 1. a. Any person who shall own, conduct or operate a home improvement business without a license therefor or who shall knowingly violate any of the provisions of this subchapter or any rules promulgated thereunder, with the exception of violations referred to in section 20-396 of this subchapter, or having had his or her license suspended or revoked shall continue to engage in such business, shall be guilty of a misdemeanor, and upon conviction, shall be punishable by imprisonment for not more than six months, or by a fine of not more than one thousand dollars, or both such fine and imprisonment, and each such violation shall be deemed a separate offense.

b. In addition to the penalties provided by paragraph a of this subdivision and those provided by sections 20-105 and 20-106 of chapter one of this title, any person who violates any of the provisions of this subchapter shall be liable for a penalty of not more than one thousand dollars for each such violation.

2. The corporation counsel may bring an action in the name of the city to restrain or prevent any violation of this subchapter or any continuance of any such violation.

3. Where any violation of this subchapter is found to be willful or where such violation has posed a threat to the health or safety of the owner, the commissioner may order the contractor to pay to the owner an amount which shall not exceed three times the actual amount of any damages sustained by the owner as a result of such violations.

§ 20-401.1 Violations for operating without a license; seizure; forfeiture. a. 1. For purposes of this section, the term "owner" shall mean an owner as defined in section one hundred twenty-eight and in subdivision three of section three hundred eighty-eight of the vehicle and traffic law.

2. For purposes of this section, the term "security interest" shall mean a security interest as defined in subdivision k of section two thousand one hundred one of the vehicle and traffic law.

3. For purposes of this section, the term "unlicensed activity" shall mean the conduct of any activity for which a license is required pursuant to subdivision a of section 20-387 of this subchapter, without such license.

b. Any police officer or authorized officer or employee of the department, upon service on the owner or operator of a vehicle of a notice of violation for engaging in unlicensed activity, may seize a vehicle which such police officer or authorized officer or employee has reasonable cause to believe is being used in connection with such violation. Any vehicle seized pursuant to this subdivision shall be delivered into the custody of the department or other appropriate agency. The commissioner shall hold a hearing to adjudicate the violation underlying the seizure within five business days after the date of seizure and shall render his or her determination within three business days after the conclusion of the hearing. Such determination shall also include a finding as to whether or not such vehicle was used in connection with such violation.

c. An owner may obtain release of a vehicle seized pursuant to subdivision b of this section prior to the hearing provided for in such subdivision, if such owner has not previously been found to have engaged in unlicensed activity within a five-year period prior to the violation resulting in such seizure. The vehicle shall be released to an eligible owner upon the posting of an all cash bond in a form satisfactory to the commissioner in an amount sufficient to cover the maximum fines or civil penalties which may be imposed for the violation underlying the seizure and all reasonable costs for removal and storage of such vehicle.

d. After adjudication of the violation underlying the seizure, if the commissioner finds that the vehicle has not been used in connection with unlicensed activity, the department shall promptly release such vehicle upon written demand of its owner.

e. After adjudication of the violation underlying the seizure, if the

commissioner finds that the vehicle has been used in connection with unlicensed activity then: (i) if the vehicle is not subject to forfeiture pursuant to paragraph one of subdivision g of this section, the department shall release such vehicle to an owner upon payment of all applicable fines and civil penalties and all reasonable costs of removal and storage; or (ii) if the vehicle is subject to forfeiture pursuant to paragraph one of subdivision g of this section, the department may release such vehicle to an owner upon payment of all applicable fines and civil penalties and all reasonable costs of removal and storage, or may commence a forfeiture action within ten days after the owner's written demand for such vehicle.

f. Any vehicle that has not been claimed by the owner within ten days after adjudication by the commissioner of the violation underlying the seizure shall be deemed by the department to be abandoned. Such vehicle shall be disposed of by the department pursuant to section twelve hundred twenty-four of the vehicle and traffic law.

g. 1. In addition to any other fine, penalty or sanction provided for in section 20-401 of this code, a vehicle seized pursuant to subdivision b of this section, and all rights, title and interest therein shall be subject to forfeiture to the city upon notice and judicial determination thereof if the owner of such vehicle has been found liable at least two times within a five-year period for engaging in unlicensed activity, and each of those determinations have included findings that a vehicle was used in connection with such violations.

2. A forfeiture action pursuant to this subdivision shall be commenced by the filing of a summons with a notice or a summons and complaint in accordance with the civil practice law and rules. Such summons with notice or a summons and complaint shall be served in accordance with the civil practice law and rules on all owners of the subject vehicle listed in the records maintained by the department of motor vehicles, or for vehicles not registered in the state of New York, in the records maintained by the state of registration. A vehicle which is the subject of such action shall remain in the custody of the department or other appropriate agency pending the final determination of the forfeiture action.

3. Notice of the institution of the forfeiture action shall be given by first-class mail to all persons holding a security interest in such vehicle, if such security interest has been filed with the department of motor vehicles pursuant to the provisions of title ten of the vehicle and traffic law, at the address set forth in the records of such department, or for vehicles not registered in the state of New York, all persons holding a security interest in such vehicle if such security interest has been filed with the state of registration and which persons are made known by such state to the department, at the address provided by such state of registration.

4. Any owner who receives notice of the institution of a forfeiture

action who claims an interest in the vehicle subject to forfeiture may assert a claim in such action for the recovery of the vehicle or satisfaction of the owner's interest in such vehicle. Any person with a security interest in such vehicle who receives notice of the institution of the forfeiture action who claims an interest in such vehicle subject to forfeiture may assert a claim in such action for satisfaction of such person's security interest in such vehicle.

5. Forfeiture pursuant to this subdivision shall be made subject to the interest of a person who claims an interest in the vehicle pursuant to paragraph four of this subdivision, where such person establishes that: (i) the use of the vehicle for the conduct that was the basis for the seizure of the vehicle occurred without the knowledge of such person, or if such person had knowledge of such use, that such person did not consent to such use by doing all that could reasonably have been done to prevent such use, and that such person did not knowingly obtain such interest in the vehicle in order to avoid the forfeiture of such vehicle, or (ii) that the conduct that was the basis for such seizure was committed by any person other than such person claiming an interest in the vehicle, while such vehicle was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

6. The department or agency having custody of the vehicle, after judicial determination of forfeiture, shall, at its discretion, either (i) retain such vehicle for the official use of the city; or (ii) by public notice of at least five days, sell such forfeited vehicle at public sale. The net proceeds of any such sale shall be paid into the general fund of the city.

7. In any forfeiture action commenced pursuant to this subdivision, where the court awards a sum of money to one or more persons in satisfaction of such person's interest in the forfeited vehicle, the total amount awarded to satisfy such interest or interests shall not exceed the amount of the net proceeds of the sale of the forfeited vehicle after deduction of the lawful expenses incurred by the city, including reasonable costs of removal and storage of the vehicle between the time of seizure and the date of sale.

§ 20-402 Official acts used as evidence. The official acts of the commissioner and the department shall be prima facie evidence of the facts therein and shall be entitled to be received in evidence in all actions at law and other legal proceedings in any court or before any agency, board, body or officer.

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 the New York City Licensing Law (and Rules, if enacted) are included as a handout in this packet. The 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.

RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 2: LICENSES
SUBCHAPTER V: HOME IMPROVEMENT BUSINESS

§2-220 Proof of Compliance with Escrow Account Requirements of State Lien Law.

(a) As used in this section, the term "financial institution" means a bank, trust company, savings bank, or state or federal savings and loan association located in this state.

(b) Every person who applies for a license or for a renewal for a license to solicit, canvass, sell, perform or obtain a home improvement contract as a contractor on or after June 25, 1996 shall submit with the application for such license a true copy of either:

(1) An account statement from a financial institution where the applicant has established an escrow account to comply with the requirements of paragraph (a) of subdivision 4 of §71-a of the lien law and a notarized statement sworn to by the applicant in which the applicant identifies the account for which the statement is issued by the name and address of the financial institution that holds the account, the name of the account holder, which shall be the same as the name of the applicant, and the account number provided by the financial institution, and the applicant affirms that it is the account that has been established for the purpose of complying with such requirements of the state lien law. The account statement filed with the application shall be a statement issued by the financial institution within the preceding 60 days of the date of the application; or

(2) A commitment from a surety company licensed in this state under which such surety company is irrevocably bound to issue to the applicant during the term of the applicant's license a bond or contract of indemnity if the applicant elects to post a bond or contract of indemnity with an owner pursuant to paragraph b of subdivision 4 of §71-a of the lien law, or a commitment from a financial institution under which such institution is irrevocably bound to issue to the applicant during the term of the applicant's license an irrevocable letter of credit if the applicant elects to furnish a letter of credit to an owner pursuant to paragraph b of subdivision 4 of §71-a of the lien law.

§2-221 **Content and Cancellation of Contract.**

(a) Every agreement to perform a home improvement shall be evidenced by a written contract signed by all the parties to the contract and each home improvement contractor or salesperson shall furnish to the buyer a fully completed legible copy of the entire home improvement contract at the time of its execution and before any work is done. The home improvement contract shall be legible, in plain English and any other language, that was principally used in the oral sales presentation. The contract shall contain all of the following:

(1) the date of the transaction, the contractor's name, office address, telephone number and license number; and the salesperson's name and license number.

(2) the approximate dates, or estimated dates, when the work will begin and be substantially completed, including a statement of any contingencies that would materially change the approximate or estimated completion date. In addition to the estimated or approximate dates, the contract shall also specify whether or not the contractor and the owner have determined a definite completion date to be of the essence.

(3) a description of the work to be performed, the materials to be provided to the owner, including make, model number or any other identifying information, and the agreed upon consideration for the work and materials.

(4) a notice to the owner purchasing the home improvement that the contractor or subcontractor who performs on the contract and is not paid may have a claim against the owner which may be enforced against the property in accordance with the applicable lien laws.

(5) a notice to the owner purchasing the home improvement that the home improvement contractor is legally required to deposit all payments received prior to completion in accordance with subdivision four of §71-a of the New York State Lien and that, in lieu of such deposit, the home improvement contractor may post a bond or contract of indemnity with the owner guaranteeing the return or proper application of such payments to the purposes of the contract.

(6) if the contract provides for one or more progress payments to be paid to the home improvement contractor by the owner before substantial completion of the work, a schedule of such progress payments showing the amount of each payment, as a sum in dollars and cents, and specifically identifying the state of completion of the work or services to be performed, including any materials to be supplied before each such progress payment is due. The amount of any such progress payments shall bear a reasonable relationship to the amount of work to be performed, materials to be purchased, or expenses for which the contractor would be obligated at the time of payment.

(7) any advertised representation including, but not limited to, any charge, guaranty, or warranty, shall be clearly stated and made a part of the home improvement contract.

(8) a clause wherein the contractor agrees to furnish the buyer with a certificate of Workers' Compensation Insurance prior to commencement of work pursuant to the contract.

(9) a clause wherein the contractor agrees to procure all permits required by local law.

(10) in immediate proximity to the space reserved in the contract for the signature of the buyer, in bold face type a minimum size of 10 points, a statement in the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

(b) The contractor or salesperson shall furnish to the buyer at the time s/he signs the home improvement contract a separate completed form in duplicate captioned "NOTICE OF CANCELLATION" which shall be attached to the contract and easily detachable, and which shall contain in ten point bold face type, in English and in any other language used in the contract; the name and address of the contractor, the date of the transaction, the date until which buyer may give notice of cancellation, and the following statement:

NOTICE OF CANCELLATION

(enter date of transaction)

-

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO [Name of seller], AT [address of seller's place of business] NOT LATER THAN MIDNIGHT OF

_____.

(Date)

I HEREBY CANCEL THIS TRANSACTION.

(Date)

-

-

(Buyer's Signature)

(c) Cancellation occurs when written notice of cancellation is given to the home improvement contractor. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid. Notice of cancellation shall be sufficient if it indicates the intention of the owner not to be bound.

(d) The contractor or salesperson shall inform the buyer orally, at the time s/he signs the contract, of his or her right to cancel.

(e) The contractor or salesperson shall not misrepresent in any manner the buyer's right to cancel.

(f) Until the contractor or salesperson has complied with §§2-221(a)(10) and 2-221(b) the buyer or any other person obligated for any part of the contract price may cancel the home improvement contract by notifying the contractor or salesperson at any time, in any manner and by any means of his or her intention to cancel. The period prescribed by §2-221(a)(10) shall begin to run from the time the contractor or salesperson complies with §§2-221(a)(10) and 2-221(b).

(g) The buyer's notice of cancellation to the contractor or salesperson need not take the form prescribed and shall be sufficient if it indicates the buyer's intention not to be bound.

(h) The contractor or salesperson shall not fail or refuse to honor any valid notice of cancellation by the buyer and within ten business days after the receipt of such notice, the contractor or salesperson shall

(1) refund all payments made under the contract;

(2) cancel and return any negotiable instrument executed by the buyer in connection with the contract;

(3) take any action necessary or appropriate to terminate promptly any security interest created in the transaction; and

(4) within ten business days of receipt of the buyer's notice of cancellation the contractor or salesperson shall notify the buyer whether the contractor intends to repossess or to abandon any shipped or delivered materials.

(i) The contractor or salesperson shall not negotiate, sell, transfer or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed.

(j) A home improvement contract may not be cancelled if the buyer initiated the contract and requested commencement of work without delay because of an emergency, provided that the buyer furnishes the contractor with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the contract within three business days.

(k) For purposes of this section a business day is any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

(l) A licensed salesperson shall exhibit a current license to any buyer or prospective buyer upon request, whether the request is made at the salesperson's place of business or elsewhere in the City of New York.

(m) A salesperson shall notify the Department of Consumer Affairs, by written confirmation from his or her employer, within 48 hours of employment. Where the salesperson has more than one employer, each employer shall file written consent with the Department of Consumer Affairs, such consent to include the name or names of other employees of the salesperson.

§2-222 Advertising and Selling Practices.

(a) *License number.* All advertising and sales literature must contain the license number of the contractor. For purposes of this section, an alphabetical listing in a telephone directory shall not be considered advertising.

(b) *Prices and illustrations.* Prices and descriptions of articles advertised shall be so placed in relation to any illustration that they will not be deceptive or misleading. An advertisement shall not be so designed as to give the impression that the price or terms of the featured merchandise apply to other merchandise in the advertisement when such is not the fact. An advertisement shall not be used which features merchandise at a price or terms boldly displayed, together with illustrations of higher-priced merchandise, so arranged as to give the impression that the lower price or more favorable terms apply to the higher priced merchandise, when such is not the fact.

(c) *Headlines.* Headings shall be free from exaggeration or deception. For example, a heading which refers to a different make, brand, grade, or quality than the item or items illustrated or listed immediately, therewith shall not be used. Headings and captions shall conform with the descriptions in the text.

(d) *"Savings" not a selling price.* A savings claim shall not be expressed in any manner which implies that the amount specified is the selling price of the merchandise.

(e) Descriptions and illustrations of advertised items or offers shall accurately portray the products to be sold as to size, quality, quantity and design.

(f) *Materials.* Any description in advertising or selling of materials to be furnished shall be accurate and there shall be no statement or implication that material will be of a particular type when such is not in fact the case.

(g) *Advertised price, limitations.* When a price or specific credit terms are featured in an advertisement, the advertisement shall accurately describe what is being offered at that price or terms (e.g. Where an item such as "10 feet by 16 feet Extension," "10 feet by 15 feet Basement," etc., is featured at a price or specific credit terms, this shall mean that a finished extension, basement, etc., will be built at the advertised price or terms). Any limitations or conditions on what will be supplied at the featured price or on credit terms shall be clearly and conspicuously stated in immediate conjunction with the featured statement (e.g.: "14 feet by 21 feet Frame Garage-Unpainted," "10 feet by 15 feet Extension—Shell Only.").

(h) *Installation charge.* If installation is extra, the advertising shall clearly and conspicuously disclose the fact in immediate conjunction therewith.

For example:

"Installation extra"

"Plus installation"

"Installation at extra cost"

(i) *Accessories and extra charge.* If the price advertised does not include all of the accessories which either appear in the advertisement, or which are necessary to effect proper installation and the use of the item (such as hardware, panels, frames, etc.), the advertisement shall state that fact clearly and prominently in close conjunction with the advertised price. Extra charges shall not be used as a device to disguise the actual selling price of merchandise.

(j) *Delivery charges.* If an extra charge is required to make delivery of any advertised home improvement or part thereof, such requirement shall be clearly and conspicuously stated in the advertisement.

(k) *"Factory to you," "No dealers."* General statements such as "Factory to You," "Direct to You," "Buy from Manufacturer," "Save the Middleman's Profit," or phrases of similar meaning shall not be used unless the advertiser is actually the maker or producer of the merchandise advertised or offered for sale.

(l) *Guaranty or warranty.* If reference is made to a guaranty or warranty or the word "guaranteed" or "warranted" is used, the terms, conditions, and period of time covered thereby shall be clearly and conspicuously disclosed in the advertisement. The terms shall indicate whether "labor and material only," "repair," "replacement," or "full (partial) refund" is offered. Any limitations shall be disclosed in the advertisement.

(m) *Reasonable fulfillment, "Lifetime."* Guaranty shall not extend for a period of time beyond the normal life of the item or service, or in the case of guarantees against defective materials and workmanship, beyond the time within which defective materials and workmanship are likely to show up. "Lifetime" and other long-term guarantees shall not be made.

(n) *Credit and credit charges.* All statement and claims regarding installment buying plans, and finance, credit service, carrying or service charges, etc., including references to down-payments and amounts and frequency of payments, shall be accurate and clearly understandable, and made in good faith.

(o) *Credit terms.* Where any repayment price is offered, it shall be stated in specific amounts per month.

(p) *Price reductions.* Claims which state or imply a price reduction or savings from the advertiser's previous price, whether as a dollar amount or percentage, must be based on the advertiser's usual and customary selling price for the item in the normal and regular course of his or her business. Such claims shall not be based on isolated or infrequent sales, on fictitious list prices, or by "guesstimating."

(q) Phrases featuring a sale with a stated time limitation (e.g. "3-Day Sale") shall be used only when the advertised items are to be taken off sale and will revert to a higher price for a reasonable length of time, immediately following the sale.

(r) *Claimed results.* Claims as to performance, protection, results which will be obtained by or realized from a particular home improvement product or service shall be based on known and provable facts. Extravagant claims such as "cuts fuel bill 30 percent," "outlasts . . ." the accuracy of which is dependant on factors over which the advertiser or seller has no control, should not be used.

(s) *Model home and referral offers.* No advertisement shall promise to any buyer or prospective buyer that his or her dwelling will serve as a so-called "model home" or "advertising job," or other similar representation, wherein the buyer or prospective buyer is led into believing that s/he will be paid a commission or other compensation for any sale made in the vicinity or within any specified distance from his or her home, or that the cost of the purchase of any home improvement product or service will thereby be reduced or fully paid.

(t) *Insured and bonded.* Where claims of being insured or bonded appear in an advertisement, the nature of the insurance or bond shall be distinctly stated in the advertisement.

(u) *Pricing.* If a price ("per square foot," or other basis) is quoted in the advertising of residential aluminum siding which does not include all costs for labor, parts, and accessories for the proper functioning and appearance of such installed product (e.g. starter-strips, door and window trim, window head flashing, back-up pieces and corner pieces), it shall be clearly and conspicuously qualified in conjunction therewith by some explanatory statement, such as "Panels Only—Necessary Accessories at Extra Cost."

§2-223 Prime Contractor's Duties and Responsibilities.

(a) In the performance of any Home Improvement Contract it shall be the non-delegable duty and obligation of the prime contractor to secure or see to the securing of each and every permit, license, certificate of occupancy, special exception or the like necessary to the proper completion of such contract in accordance with applicable state or local building laws.

(b) Each home improvement contractor shall maintain books of account, copies of all contracts with buyers, and other such records as shall properly and completely reflect all transactions involving the home improvement business. These records shall be maintained for six years or the length of time of the contract guarantee, whichever is longer.

(c) A home improvement contractor must treat all funds received from a customer pursuant to a home improvement contract as trust funds to be applied solely to the

payment of expenses directly related to the home improvement. Such funds may not be applied to the payment of expenses unrelated to the home improvement unless and until the home improvement is completed and all the expenses for direct labor, material and sub-contractors related thereto have been paid by the contractor.

(d) Except as provided in §2-221(j), the home improvement contractor shall not perform or cause or permit the performance of any of the following actions until after the three day cancellation period has expired and s/he is reasonably satisfied that the customer has not exercised his or her right of cancellation:

- (1) Disburse any money other than in escrow;
- (2) Make any physical changes in the property of the customer;
- (3) Perform any work or service for the buyer; or
- (4) Make any deliveries to the residence of the customer if the creditor has retained or will acquire a security interest other than one arising by operation of law.

§2-224 Home Improvement Business Trust Fund.

(a) *Establishment.* A Home Improvement Business Trust Fund (hereinafter, "the Fund") is hereby established to provide for the payment of outstanding awards to aggrieved consumers and fines owed to the Department. The Fund shall be administered by the Comptroller of the City of New York pursuant to §93(h) of the New York City Charter.

(b) *Participation in the Fund.* (1) Home improvement licensees may elect to participate in the Fund in lieu of furnishing a bond as required by the Home Improvement Business Law Bond Requirement which was imposed by the Commissioner on February 1, 1983, pursuant to §20-115 of the New York City Administrative Code. The Commissioner hereby waives said bond requirement, which appears as §2-225 of these regulations, for any licensee who elects to participate in the Fund pursuant to the provisions of this section.

(2) Any home improvement license applicant who elects to participate in the Fund must submit to the Department a check in the amount of two hundred dollars, made payable to the New York City Department of Consumer Affairs, before a license will be issued. Any bonded licensee may elect to participate in the Fund in lieu of continued compliance with the Bond Requirement of §2-225 by causing the Department to receive a check in the amount of two hundred dollars, made payable to the New York City Department of Consumer Affairs, prior to the expiration or cancellation date of the licensee's bond. All fund participants who elect to continue to participate in the Fund shall contribute two hundred dollars upon each renewal of their license. Any fund participant who elects not to continue to participate in the Fund at the time of renewal shall furnish a bond in accordance with paragraph (4) of this subdivision and §2-225 before the renewal license will be issued. Failure to comply with this paragraph shall constitute a failure to comply with a lawful demand or requirement lawfully made by the Commissioner for purposes of §20-392 of the Administrative Code.

(3) The Commissioner may, from time to time, amend this section to require such additional contributions by participants in the Fund as the Commissioner determines to be necessary to maintain an amount in the Fund which is adequate to fulfill its purposes

and to counteract depletion of the Fund resulting from payments made out of the Fund pursuant to §2-224(c) hereof.

(4) Fund participants may discontinue their participation in the Fund at any time by filing a bond pursuant to the Home Improvement Business Law Bond Requirement. No participant will be entitled to a refund of any monies contributed to the Fund unless the Fund is dissolved by the Commissioner. All such refunds will be disbursed in accordance with regulations promulgated by the Commissioner and in effect at the time of such dissolution.

(5) Participation in the Fund does not relieve a licensee of any obligation to pay awards or fines imposed by the Department or judgments or arbitration awards rendered against a licensee by a court of competent jurisdiction. In the event that a contractor's license is revoked, surrendered or the contractor fails to renew its license, and the Fund is invaded to pay an award, fine or judgment that was rendered against such contractor pursuant to the provisions herein, no license shall be issued or reinstated to such contractor or to any home improvement business in which such contractor is an officer, shareholder, partner or principal, unless the amount(s) paid out of the Fund on behalf of such contractor is reimbursed by such contractor in full.

(6) In the event that a home improvement contractor's license is revoked, surrendered or the contractor fails to renew its license and the Fund invaded to pay an award, fine or judgment that was rendered against such contractor, pursuant to the provisions herein, the Commissioner or his or her designee shall have discretion to exclude such contractor, or any home improvement business in which such contractor is a principal, from future participation in the Fund. The Commissioner or his or her designee may, in his or her discretion, require such home improvement contractor to comply with the Home Improvement Business Law Bond Requirement.

(7) All participants who have elected to participate in the Fund prior to August 1, 1991 shall contribute an additional one hundred fifty dollars to the Fund before September 1, 1991. The Commissioner, in his or her discretion, may require any Fund participant who fails to comply with this paragraph to furnish a bond in accordance with Regulation 11. Failure to comply with this paragraph shall constitute a failure to comply with a lawful demand or requirement lawfully made by the Commissioner for purposes of §20-392 of the Administrative Code.

(c) *Invasion of the Fund.* (1) The Commissioner may require that disbursements be made from the Fund to pay outstanding awards to consumers and Departmental fines when:

(i) the Department has conducted an administrative hearing that results in a finding that a home improvement contractor is in violation of a law, ordinance or regulation enforced by the Department; and the department or a court of competent jurisdiction has rendered a decision, judgment or an arbitration award against the contractor for damages suffered by a consumer arising out of a home improvement contract; and

(ii) the contractor is ordered by the Department to pay an award to a consumer, a Departmental fine or to satisfy a judgment or arbitration award; and

(iii) the contractor has failed to pay such award to a consumer, a Departmental fine or satisfy a judgment or arbitration award, within 30 days of the date of the Department's order; and

(iv) the Department has revoked the contractor's license or the contractor has surrendered or failed to renew said license after the Department's order.

(v) Notwithstanding the above, if a contractor has filed a petition for relief under any chapter of Title 11 of the United States Code, the Department may waive the requirements set forth in subparagraphs (b), (c) and (d) of this paragraph (1) and require disbursements to be made from the Fund.

(2) Disbursements will not be made from the Fund to pay an award, fine or judgment that is rendered against: a licensee who has furnished a bond, pursuant to the Bond Requirement of §2-225; or home improvement contractor who was never licensed by the Department or a participant in the Fund.

(3) Disbursements from the fund will be made at the discretion of the Commissioner or his or her designee, provided, however, that invasion of the fund shall be limited to no more than twenty thousand dollars for all awards, fines and judgments arising out of a single home improvement contract.

(4) The Commissioner or his or her designee may order that partial payment of awards, fines or judgments be made from the Fund.

(5) Nothing contained herein shall be construed to limit the rights and remedies of any party, including the Department, to pursue a cause of action against a home improvement contractor who is a participant in the Fund.

(6) Nothing contained herein shall be construed to create a right of any person to a portion of any of the Fund, except in the case of an award duly made by the Commissioner pursuant to the provisions herein.

(7) Nothing contained herein shall be construed to provide for the payment of awards or judgments rendered against Fund participants in personal injury actions.

(d) *Accounting.* The Commissioner shall, by January 31 of each year, cause an accounting to be made of all of the Fund's activities during the preceding calendar year.

§2-225 Notice of Bond Requirement.

Each home improvement contractor shall furnish a \$20,000 bond to the Department of Consumer Affairs conditioned upon:

(a) compliance with all laws, rules and regulations covering the conduct of home improvement contractors;

(b) payment to the City of New York of any fine, penalty or other obligation imposed by the Department of Consumer Affairs for non-compliance with any law(s), rule(s) or regulation(s) within 30 days of its imposition; and

(c) payment of any final judgment against the home improvement contractor pursuant to the requirements of §1-15. The bond shall be either a cash bond or a bond executed by a duly authorized surety company in a form acceptable to the Commissioner.

§2-226 Written Examination Required.

Every person who applies for a license as a home improvement contractor or as a salesperson (as defined in §20-386(9) of the Administrative Code of the City of New York) on or after April 30, 1993, shall be required to pass an examination prior to being issued a home improvement contractor license in accordance with §20-387 of the

Administrative Code of the City of New York. Such examination shall test the knowledge of the applicant with respect to home improvement business practices, procedures and regulatory requirements and shall be offered twice per month. Applicants who fail the examination may retake the examination when it is offered by the Department. An applicant for renewal of a license shall not be required to take an examination provided the application is submitted and payment of the license fee is made within one (1) month following the expiration of the term of the current license.