

A LOCAL LAW to amend the Nassau County administrative code in relation to licensing persons engaged in the home improvement business.

BE IT ENACTED by the Board of Supervisors of the County of Nassau as follows:

Section 1. Chapter twenty-one of the Nassau County Administrative Code is hereby amended to read as follows:

TITLE D-1
LICENSES

Article 1. Home Improvement business

Section	21-11.0	Legislative purpose	21-11.1
Definitions			
	21-11.2	License required; Home Improvement business	
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thereof, or (e) automatic fire alarm systems, or (f) burglar alarm systems.

4. "Home improvement contract" means an agreement between a contractor and an owner for the performance of a home improvement, and includes all labor, services and materials to be furnished and performed thereunder.

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

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

7. "Owner" means any homeowner, 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.

8. "Person" means an individual, firm, partnership, association or corporation.

9. "Management Personnel" means a person or persons who are principals in a contracting business or who are employed by a contractor and are responsible for assisting in the business of the contractor and vested with such discretion and judgment as to accomplish the business purpose of the contractor.

21-11.2 License required: Home Improvement business

No person shall own, maintain, conduct, operate, engage in or transact a home improvement business after January first nineteen hundred seventy two, or hold himself out as being able to do so after such date unless he is licensed therefore pursuant to this title.

21-11.3 Craft licenses

1. A license issued pursuant to this title may not be construed to authorize the licensee to perform any particular type of work or 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 as is issued or permitted pursuant to this title authorize engaging in the home improvement business.

2. Nothing in this title shall be construed to limit or restrict the power of a city, town or village to regulate the quality, performance or character of the work of the contractors including a system of permits and inspections which are designed to secure compliance with and aid in the enforcement of applicable state and local building laws, or to enforce other laws which are necessary for the protection of the public health and safety. Nothing in this title limits the power of a city, town or village to adopt any system of permits requiring submission to and approval by the city, town or village of plans and specifications for an installation prior to the commencement of construction of the installation or of inspection of work done.

21-11.4 Home Improvement business licenses; Requirements

1. The maintenance of a bona fide establishment at a definite location within the state shall be a prerequisite for the issuance of a home improvement business license. The use of a telephone answering service shall not constitute a location for purposes of this section.

2. (a) An applicant for a home improvement contractor's license must establish that he is the real owner and possess title to or is entitled to the possession of the establishment and will conduct, engage in and transact a home improvement business. He must furnish satisfactory evidence of a good moral character and financial responsibility.

(b) All applicants for a home improvement license shall be fingerprinted by the Nassau County Police Department. The cost for fingerprinting shall be an expense payable by the applicant.

(c) All applicants must furnish certificates of public liability and property damage insurance in the amount of one hundred thousand dollars (\$100,000) per person, three hundred thousand dollars (\$300,000) per occurrence, bodily injury and fifty thousand dollars (\$50,000) each occurrence and aggregate, property damage.

3. The Commissioner may require an application for a license or a renewal application to be accompanied by a bond, approved as to form by the county attorney, executed by a bonding or surety company authorized to do business in the state of New York, in an amount to be set by the commissioner, but in no event to exceed one hundred thousand dollars (\$100,000), conditioned upon the assurance that during the term of such license, the licensee will continue to comply with the provisions of this

title to assure that upon default in the performance of any contract, the advance payments made thereon, less the reasonable value of services actually rendered to the date of such default, of the reasonable costs of completion of the contract in the event of non completion thereof, will be refunded to the purchaser, owner or lessee with whom such contract was made. Such bond shall run to the County of Nassau for the use and benefit of any person or persons intended to be protected thereby. The filing of the required bond in the office of the clerk of the board of supervisors, after approval as to form by the county attorney, shall be deemed sufficient compliance with this section. The Commissioner may require a bond at any time during the term of the license based on the licensee's performance during such term.

21-11.5 Licenses; Display; Renewals; Duplicates

1. All licenses, except temporary licenses, shall be for a period of two (2) years from the date of issuance and shall expire on the last day of the twenty-fourth (24th) month following issuance.

2. No license shall be assignable or transferable except as hereinafter provided. A license to conduct a home improvement business issued to an individual may be assigned or transferred for the remainder of the license period to a partnership or corporation if such individual is a member of such partnership or a stockholder of such corporation owning not less than twentyfive (25) percent of the outstanding stock at the time of such assignment or transfer. A license issued to a partnership may be assigned or transferred for the remainder of the license period to any one member of such partnership provided he obtains the consent of all of the other members of such partnership. The application of such transfer or assignment must be accompanied by proof satisfactory to the Commissioner that the requirements herein provided have been complied with. No assignment or

transfer shall become effective unless and until the endorsement of the transfer or assignment has been made on the face of the license by the Commissioner and such license, so endorsed, has been returned to the assignee or transferee. All such endorsements shall be made upon a payment fee of fifty dollars (\$50).

3. Each license issued pursuant to this title shall be posted and kept posted in some conspicuous place in the home improvement business.

4. Any license, except a temporary license, which has not been suspended or revoked, may, upon the payment of the renewal fee prescribed by this title, be renewed for an additional period of two (2) years from its expiration, upon filing of an application for such renewal on a form to be prescribed by the Commissioner. Failure to make an application for such renewal within fifteen (15) days, shall subject the licensee to a penalty of seventy-five dollars (\$75) which shall be paid prior to the issuance of the renewal.

5. A duplicate license may be issued for one lost, destroyed or mutilated upon application therefore on a form prescribed by the Commissioner and the payment of the fee prescribed therefore by this title. Each such duplicate license shall have the word "duplicate" stamped across the face thereof and shall bear the same number as the one it replaces.

6. A supplementary license may be issued for each additional place of business maintained by a licensee within the County of Nassau upon application therefore on a form prescribed by the Commissioner and a payment of the fee prescribed therefore by this title. Each such supplementary license shall have the word "supplementary" stamped across the face thereof and shall bear the same name as the original.

21-11.6

Fees

1. The fee for a license to conduct a home improvement business shall be five hundred dollars (\$500) and for each renewal thereof the fee shall be five hundred dollars (\$500).

2. The fee for issuing each supplementary license shall be one hundred dollars (\$100) or fifty dollars (\$50) for a duplicate license for one lost, destroyed or mutilated.

3. The fees hereinabove set forth shall be those for licenses issued for a period of two (2) years.

4. The Commissioner shall refund the fee paid by any applicant in the event that the applicant for the license has predeceased its issuance, or has been inducted into the military service prior to its issuance. The Commissioner shall refund half of the fee paid by any applicant in the event that the application is denied. Such refunds shall, upon approval of the Commissioner and after audit by the comptroller, be paid from any monies received from the operation of this title.

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21-11.7 Powers of the Commissioner

In addition to the powers and duties prescribed in this title, the Commissioner shall have power:

1. To appoint such officers and employees, within the appropriation therefore, as he shall deem necessary for the performance of his duties.

2. To examine into the qualifications and fitness of applicants for licenses under this title.

3. To keep records of all licenses issued, suspended or revoked.

4. To adopt such rules and regulations not inconsistent with the provisions of this title as may be necessary with respect to the form and content of applications for licenses, the receipt thereof, the investigation and examination of applicants and their qualifications, and the other matters incidental or appropriate to his powers and duties as prescribed by this title and for the proper administration and enforcement of the provisions of this title, and to amend or repeal any of such rules and regulations.

5. In the event that an applicant for a home improvement license has outstanding examinations, hearings, investigations, complaints or proceedings with the Office of Consumer Affairs, the Commissioner shall be authorized, after review, to issue a temporary license. Said temporary license shall be for a period and under conditions to be determined by the Commissioner. Said temporary license shall have no effect upon the merits of the outstanding matters of the applicant pending in the Office of Consumer Affairs.

6. The Commissioner or Commissioner's designee shall be authorized to suspend the license of any person pending payment of such fine, penalty or pending compliance with any order of

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the Commissioner or the Office of Consumer Affairs of with any other lawful order of the Office.

7. The Commissioner or the Office of Consumer Affairs may arrange for the redress of injuries or damage caused by any violation of this article and may otherwise provide for compliance with the provisions and purposes of this article.

8. The Commissioner shall be authorized to impose a fine or civil penalty or to suspend a license or both for failure to appear at a hearing at the Office after due notice of such hearing. If a license has been suspended, it shall be returned to the Office forthwith upon receipt of the order of suspension. Failure to surrender the license shall be grounds for a fine or civil penalty or revocation of the license.

9. Any of the remedies provided for in this section shall be in addition to any other remedies provided under any other

6 provision of law. ~ ~

10. The Commissioner, upon due notice and hearing, may require that persons licensed under this title who have committed repeated, multiple or persistent violations of this title or any other law, rule or regulation the enforcement of which is within the jurisdiction of the Office, conspicuously display at their place of business and in advertisements a notice (of a form, content and size to be specified by the Commissioner), which shall describe the person=s record of such violations; provided that, for each time such display is required, the Commissioner may require that such notice be displayed for not less than ten not more than one hundred days.

21-11.8 Refusal, suspension and revocation of license;
Fines

A license to conduct, operate, engage in and transact a home improvement business as a home improvement contractor may be refused, suspended or revoked by the Commissioner or a fine not exceeding five thousand dollars (\$5,000), or both, may be imposed

by the Commissioner or an authorized officer or employee of the Commissioner 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 contractor is not financially responsible.

4. The person or the management personnel of the contractor are untrustworthy or not of good character.

5. The business transactions of the contractor have been marked by a failure to perform it's contracts.

6. The wilful manipulation of assets or accounts by the contractor.

7. Failure to display the license as provided in this title.

8. Failure to resolve a valid complaint registered in the Office of Consumer Affairs.

9. Violation of any provision of this title, or of any rule or regulation adopted hereunder.

10. A home improvement contractor who has had a license suspended and/or revoked in another jurisdiction shall report said suspension or revocation within ten (10) days of said action. Upon receipt of notification, the Commissioner, or his designee, may order a hearing to determine the continued validity of the contractor's ability to operate as a home improvement

licensee in Nassau County.

Any failure on the part of the contractor to report another jurisdiction's actions, shall be deemed a willful failure to report and will result in the immediate suspension and/or revocation of the contractor's home improvement license in Nassau County.

21-11.9 Prohibited acts

The following acts are prohibited:

1. Abandonment or willful failure to perform without justification, any home improvement contract or project engaged in or undertaken by the contractor.

2. Making any substantial misrepresentation in the procurement of a home improvement contract, or making any false promise 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. Preparing or accepting any mortgage, promissory note or other evidence of indebtedness upon the obligation of a home improvement transaction with knowledge that it represents a greater monetary obligation than the agreed consideration for the home improvement work.

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 or 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. Willful or deliberate disregard and violation of the building, sanitary and health laws of this state or of any political or municipal subdivision thereof.

7. Willful failure to notify the Commissioner, in writing, 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. Willful failure to comply with any order, demand or requirement made by the Commissioner pursuant to provisions of this title.

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 charges or allow to a buyer any compensation or award for the procurement of a home improvement contract with others.

11. No contractor shall offer or pay a loan as an inducement to enter into a home improvement contract.

12. No acts, agreements or statements of a buyer under a home improvement contract shall constitute a waiver of any provisions of this title intended for the benefit or protection of the buyer.

13. Any transaction or agreement which fails to provide that the buyer can cancel same at any time prior to midnight on the third business day after the date of such agreement without penalty and every home improvement contract, excluding contracts signed in the seller's retail business establishment, shall contain a "Notice of Cancellation" in such form as provided by the Commissioner pursuant to such rules and regulations as he promulgates.

14. A willful deviation from or disregard of plans or specifications in any material respect without the consent of the owner.

21-11.10 Exceptions

No contractor's license shall be required of any person when acting in the particular capacity or particular type of transaction set forth in this section.

1. An individual who performs labor or services for a licensee as an employee thereof.

2. A plumber, electrician, architect, professional engineer or any other such person who is required by state or local law to attain standards of competency or experience as a prerequisite to engaging in such craft of profession and who is acting exclusively within the scope of the craft or profession for which he is currently licensed pursuant to such other law.

3. This title shall not apply to a home improvement contract otherwise within the purview of this local law which is made prior to the effective date of the respective provisions of this title governing such contracts.

21-11.11 Completion date

Every home improvement contract shall provide for a completion date on which date all labor, services and materials be furnished and performed is to be completed and in no event shall such work be completed any later than thirty (30) days after said contract completion date.

21-11.12 Issuance, refusal and renewal of licenses;
Temporary licensing

1. When an application or renewal application has been filed with the Commissioner in proper form, the Commissioner shall, within a period of ninety (90) days from the date thereof, issue or refuse the appropriate contractor's license to the applicant. If the application for a license is refused, the Commissioner shall send to the applicant a written statement setting forth the reasons for refusal to grant the license.

2. The Commissioner shall prescribe and furnish such forms as he may deem appropriate in connection with applications for licenses and issuance, renewal or termination thereof.

3. An applicant for any license required by the provisions of this title shall file with the Commissioner a written application which shall be signed and under oath. As a part of

or in connection with such application, the applicant shall furnish information concerning his true identity, residence, personal history, home improvement business and any other pertinent facts which the Commissioner may require. The Commissioner may require names of owners, stockholders, partners, directors and officers of any applicant, and the business address and trade names of any applicant.

4. Every contractor licensee shall immediately after a change in control or ownership or of management or a change of address or trade name, notify the Commissioner in writing of such changes.

5. Licenses of all contractors shall expire two (2) years from the date of issuance unless prior thereto the license is revoked or suspended by the Commissioner. Upon payment of the bi-annual license fee, as prescribed by section 21-11.6 of this title, prior to the expiration date, a license may be renewed at the discretion of the Commissioner for another two (2) years, and the authority to do business shall continue in effect until such time within the two (2) years as the Commissioner revokes or suspends the license.

6. Temporary licenses may be issued in accordance with such rules or regulations as the Commissioner may prescribe to any applicant who files an application in proper form and pays the bi-annual license fee thereof. A temporary license shall automatically expire at the time the Commissioner either refuses to issue or grants the license.

7. The Commissioner may, at any time, require reasonable information of an applicant or licensee, and may require the production of books of accounts, financial statements or other records which relate to the home improvement activity, qualification or compliance with this title by the licensee.

21-11.13 Hearings on charges; Decisions

1. No license shall be revoked until after a hearing had before an officer or employee of the Commissioner designated for such purpose by the Commissioner upon notice to the licensee of at least ten (10) days except as otherwise provided in this section. The notice shall be served by registered or certified mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee; and, if the licensee fails to attend such hearing, the Commissioner shall revoke the license of said licensee. The licensee shall be heard in his defense either in person or by

counsel and may offer evidence on his behalf. A stenographic record of the hearing shall be taken. The person conducting the hearing shall make a written report of his findings and a recommendation to the Commissioner for decision. The Commissioner shall review such findings and the recommendations and, after due deliberation, shall issue an order accepting, modifying or rejecting such recommendation. For the purpose of this title, the Commissioner or any officer or employee of the department designated by him may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents deemed pertinent to the subject of investigation.

2. A license may be suspended or fine imposed after a hearing had before an officer or employee of the Commissioner designated for such purpose by the Commissioner upon notice to the licensee of at least ten (10) days except as otherwise provided in this section. The notice shall be served by registered or certified mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee, and if the licensee fails to attend such hearing, the Commissioner shall revoke the license of said licensee. The licensee shall be heard in his defense either in person or by counsel and may offer evidence on his behalf. For the purpose of this title, the Commissioner or any officer or employee of the department designated by him may administer oaths, take testimony, subpoena witnesses and compel the production of book, papers, records and documents deemed pertinent to the subject of investigation.

3. Any fine authorized by Section 21-11.8 may be waived or compromised by the Commissioner or his designated representative.

21-11.14 The Home Improvement Industry Board

1. Board

The Commissioner of Consumer Affairs shall appoint a seven (7) member home improvement contracting board to serve for a three (3) year term. Said board shall be composed of individuals having a personal knowledge and interest in home improvement contracting such as representatives of labor, management, trade or government. The Commissioner shall serve as a non-voting ex officio member of each board. Three (3) members of the board shall be appointed for a three (3) year term, two (2) members for a two (2) year term and two (2) members for a one (1) year term. All appointments thereafter shall be for a three (3) year term.

2. Compensation

No member of the board shall be compensated for performing the duties of said board. Reasonable and necessary expenses incurred by a member carrying out the duties defined herein shall be compensated by the County of Nassau.

3. Powers and duties

The board shall have the following powers and duties:

(a) To hold bi-monthly meetings in the Office of Consumer Affairs for the efficient discharge of the responsibilities and duties of the board.

(b) To make rules for the conduct of its meetings and keep a minute book of its proceedings, including a record of its examinations and other official actions.

(c) To conduct meetings and, after a hearing at which all interested parties are afforded a sufficient opportunity to be heard, submit recommendations to the Commissioner relating to the home improvement industry.

(d) To formulate and recommend to the Commissioner and the Office of Consumer Affairs standards for the issuance, suspension and revocation of licenses and identification cards, including the conditions for the issuance of same, the type of examination required, the terms and fees and the conditions upon the circumstances under which the same may be revoked or suspended.

1. Any person who shall own, conduct or operate a home improvement business without obtaining a license therefore or who shall violate any of the provisions of this title or any rules promulgated thereunder, or having had a valid license which has been suspended or revoked, shall continue to engage in such business, shall be guilty of a class A misdemeanor and subject to the punishment provided therefore. Each such violation shall be deemed a separate offense.

2. In addition to the penalties provided by paragraph 1 of this subdivision and those provided by sections 21-10.2 of this

12 title, any person who violates any of the provisions of this title shall be liable for a penalty of not more than five thousand dollars (\$5,000) for each such violation.

3. In addition to the penalties provided by paragraphs 1 and 2 of this section and those provided by sections 21-10.2 of this code, any person who uses a false or invalid license number, or falsely states or implies that he or she is licensed under this title, in any advertisements or in dealings with consumers, whether oral or written, shall be subject to a penalty for a deceptive trade practice, in accordance with the provisions of section 21-10.2 of this code.

4. The county attorney may bring an action in the name of the county to restrain or prevent any violation of this subdivision or any continuance of any such violation.

5. Where any violation of this subdivision is found to be willful or where such violation has posed a threat to the health or safety of the persons residing at the property at which the contractor has performed the work, the Commissioner may order the contractor to pay to the owner of such property, an amount which shall not exceed three times the actual amount of damages sustained by the owner or other person as a result of such violations.

21-11.16 Home Improvement Restitution Fund

1. There shall be a fund administered by the Office of Consumer Affairs known as the Home Improvement Restitution Fund.

2. Every home improvement contractor who applies for a license or a renewal of a license pursuant to this title on

or after the effective date of this local law, shall pay a one (1) time fee of fifty dollars (\$50.00) into the Home Improvement Restitution Fund.

3. The Nassau County Treasurer is hereby authorized, empowered and directed to deposit the collected funds into a separate account and is hereby further authorized to invest the proceeds of this account into any instrument authorized for the investment of reserve funds pursuant to Section 6-F of the General Municipal Law. All proceeds and earnings of such investments shall be retained in the Home Improvement Restitution Fund and be utilized solely and exclusively for this account.

4. The proceeds of the Home Improvement Restitution Fund shall be used to compensate an owner or owners who have obtained a judgment from a court of law or final award in arbitration against a licensed home improvement contractor but which is incapable of execution.

5. Payment of claims from the Home Improvement Restitution Fund.

(a) The Commissioner is hereby authorized to approve a payment from the Home Improvement Restitution Fund in an amount not to exceed ten thousand dollars (\$10,000) for any owner who complies with the following conditions [As amended by Local Law 20, effective November 15, 2002.]:

(1) The owner first files a complaint with the Office of Consumer Affairs against a licensed home improvement contractor subsequent to the effective date of this title.

(2) The owner provides the Commissioner with a certified copy of a final judgment of a court of competent jurisdiction, or a final award in arbitration, with all rights of appeal exhausted, in which the court or arbitrator has found on the merit that the owner is entitled to monetary relief in a sum certain, or a default judgment rendered against the home improvement contractor that the owner is entitled to monetary relief in a sum certain which shall be verified to the satisfaction of the Commissioner by the production of receipts of payments by the owner or owners or other such proof.

(3) The Nassau County Sheriff certifies in

writing to the Commissioner that the department has exhausted all remedies in attempting to execute on the judgment and that the full amount or a portion thereof remains unpaid.

(b) The Commissioner may authorize payment from the Home Improvement Restitution Fund in an amount not to exceed ten thousand dollars (\$10,000) to compensate for monetary damages certified in the aforementioned judgment or award for nonperformance, partial performance, or performance in an unworkmanlike manner by a licensed home improvement contractor.

[As amended by Local Law 20, effective November 15, 2002.]

(c) No compensation from the Home Improvement Restitution Fund shall be made for the following: attorney fees, court costs, personal injury awards, consequential, incidental or punitive damages, loss of income or loss of time.

(d) If, at any time, the amount on deposit in the Home Improvement Restitution Fund, is insufficient to satisfy any approved claims, the Commissioner, when a sufficient amount has been deposited in the Home Improvement Restitution Fund, shall satisfy the unpaid claims in the order in which they were received by the Commissioner.

(e) A claim for compensation from the Home Improvement Restitution Fund shall be brought by an owner within two (2) years from the date that the judgment or award upon which the claim is made has been filed with the County Clerk.

(f) The Commissioner may authorize payment for any unpaid judgment meeting the above conditions which is discharged in a bankruptcy court in a bankruptcy action brought by the home improvement contractor.

6. Consumer Affairs Review and Disciplinary Actions

(a) Neither the pendency of a claim or the satisfaction of a claim against the Home Improvement Restitution Fund shall limit the authority of the Commissioner to investigate and to take any action consistent with this title against a contractor or management personnel.

(b) A contractor or management personnel whose actions have resulted in the payment of a claim from the Home Improvement Restitution Fund, shall not be issued a home improvement license or a renewal thereof, until the full amount of said claim shall be repaid to the Home Improvement Restitution Fund. Said payment shall not include the fifty dollar (\$50) fee established in this title.

(c) No home improvement contracting license or a renewal thereof shall be issued to a contractor or management personnel while a claim against the Home Improvement Restitution Fund is pending.

This section of this local law shall take effect January 1, 1993 and shall apply to any and all claims filed with the Office of Consumer Affairs on or after this effective date.

Section 2. This Local Law shall take effect immediately.

RULES AND REGULATIONS RELATING
TO THE
HOME IMPROVEMENT BUSINESS

Detailed Analysis:

Paragraph 1	Home Improvement Contracts
Paragraph 2	Use of License Number
Paragraph 3	Commercial Practices
Paragraph 4	Lost or Misplaced Licenses
Paragraph 5	Gardener/Landscaper Licenses
Paragraph 6	Age Qualification
Paragraph 7	Cooling off Period
Paragraph 8	Completion Date
Rule 9	Unlicensed Home Improvement Contractors
Rule 10	Salesperson Name Printed
Rule 11	Must Carry License At All Times
Rule 12	Supply Homeowners with Insurance Proof
Rule 13	Submit Insurance to OCA each year
Rule 14	Subcontractor Disclosure
Rule 15	Home Fuel Oil
Rule 16	Swimming Pool and Spa Contractors
Rule 17	Use of License Number

OFFICE OF CONSUMER AFFAIRS
200 County Seat Drive
Mineola, N.Y. 11501

BY VIRTUE OF THE AUTHORITY VESTED IN ME UNDER THE PROVISIONS OF THE NASSAU COUNTY ADMINISTRATIVE CODE, TITLED D-1 21-11.7 (4) I HEREBY PROMULGATE THE FOLLOWING REGULATIONS RELATING TO THE HOME IMPROVEMENT BUSINESS.

1. Home Improvement Contracts

(a) Every home improvement agreement shall be evidenced in writing signed by all parties to the contract.

(b) All addendums to the contract must also be in writing signed by all parties.

(c) Any memorandum, agreement or contract furnished by a contractor to a customer shall carry said contractor's name, office address, telephone number and Nassau County license number legibly printed or stamped thereon. In addition, there shall appear on such form the name of the salesman, if such exists, legibly printed thereon.

(d) Contract provisions and addendums to the contract must specify the work to be performed, the materials to be supplied to the customer, including brand names, colors, dimensions, model numbers or any other identifying information, and the final price for the labor and materials.

2. Use of License Number and Company Name

(a) All display advertising and promotional literature shall contain the licensee's license number as printed on the license.

(b) All display advertising and promotional literature shall contain the licensee's full company name as printed on the license.

3. Commercial Practices

(a) Representations and illustrations of products or services offered to the public shall be accurately represented in all advertisements or descriptive material.

(b) Materials to be furnished shall be accurately described.

(c) Installation Charge. If installation is to be extra, the advertisement shall make such fact known.

(d) Delivery Charges. If there is to be a delivery charge, advertisements or representations shall make such fact known.

(e) Warranty or Guarantee. Where reference is made to a warranty or guarantee, such warranty or guarantee shall be clearly disclosed including the subject of the warranty or guarantee and the terms and requirements, if any.

17 (f) Price Reductions. All references to a price reduction or savings must be based on the usual and customary selling price of the item in the regular course of business. Such statements or representations shall not be based upon fictitious prices or infrequently used prices.

(g) Pricing. Where a price is quoted which does not include cost for labor, parts or accessories necessary for the proper functioning or appearance of a product or service, then said extra cost shall be prominently noted in conjunction with the price quoted. (e.g. "necessary accessories at extra cost.")

4. Lost or Misplaced Licenses

Any contractor who should misplace or lose his Home Improvement license shall immediately file an affidavit of such loss with the Office of Consumer Affairs.

5. Gardener/Landscaper Licenses

In making a determination as to the necessity of obtaining a home improvement license, the fact that a gardener or landscaper uses his own equipment in the conduct of his business and/or uses his own vehicle to transport such equipment, shall be prima facie evidence of the necessity to file for the required license.

6. Age Qualification

In order to obtain a Home Improvement License from the Nassau County Office of Consumer Affairs, the applicant must be 18 years of age.

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7. Cooling off Period

(a) Pursuant to and in accordance with Section 2111.9(13) you, the contractor, must furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g. Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in BOLD FACE type of a minimum size of 10 points, a statement in substantially 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) You must furnish each buyer, at the time he signs the contract or otherwise agrees to buy services from the seller,

18 a completed form in triplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten (10) point BOLD FACE type the following information and statements in the same language, e.g. Spanish, as that used in the contract. That the buyer has read this "NOTICE OF CANCELLATION" must be acknowledged by his signature thereon. One copy to be retained by contractor.

(c) In no such event shall contractor begin work or deliver goods prior to three days from the signing of this agreement unless the buyer furnishes the contractor with a separate dated and signed personal statement describing a situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel within three (3) business days.

8. Completion Date

Every home improvement contract shall provide for a completion date on which date all labor, services and materials to be furnished and performed is to be completed and in no event shall such work be completed any later than thirty (30) days after said contract completion date.

9. Section 21-11.11 supercedes any language modifying or changing this provision which may appear in any agreement between the contractor and buyer.

(Sample Format)

NOTICE OF CANCELLATION

I have read and received this Notice.

Buyer's Signature

Date of Transaction

- - - - -

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 CANCELED.

TO CANCEL THIS TRANSACTION, MAIL CERTIFIED, RETURN RECEIPT REQUESTED, 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)

Rule 9: Unlicensed Home Improvement Contractors

1. Upon the arrest of an unlicensed home improvement contractor for unlicensed activity, the Commissioner or his designated representative may seize any vehicle and its contents used in furtherance of unlicensed activity. The owner or driver shall be given a notice of seizure and the vehicle and its contents shall be held pending forfeiture to the County of Nassau.
2. The Office of Consumer Affairs shall issue any notice of violation immediately and a hearing on the violation shall be held within five days.
3. The Office of Consumer Affairs shall schedule a resolution conference within five days. The vehicle and its contents shall be held by the Office of Consumer Affairs until all outstanding violations and complaints have been satisfied or otherwise resolved to the satisfaction of the Office of Consumer Affairs.
4. It shall be at the discretion of the Commissioner whether the County shall seek civil forfeiture of the vehicle. Such determination shall be made within ten days of seizure.

This rule is established pursuant to the Nassau County Administrative Code, Title D, sections 21-10.0(1)(j), 21-11.7(4) and 21-11.7(7).

Rule 10:

All home improvement contracts shall contain the printed, legible name of the representative of the licensed home improvement contractor below the signature of such representative.

Rule 11:

A copy of the Nassau County Home Improvement License must be available for presentation at all job sites and a copy must be in each vehicle at all times.

Rule 12:

At the time of contracting, all contractors must supply to the homeowner a copy of their certificate of insurance describing the operations covered by their insurance and naming the homeowner as the certificate holder.

Rule 13:

All contractors shall submit proof of insurance to the Office of Consumer Affairs for the second year of the license and

containing the license number and expiration date of the license on the form or on an attached cover letter.

Rule 14:

All contractors must disclose to the homeowner on their contracts whether or not they use subcontractors. They must supply the names and license numbers of their subcontractors to the homeowner at the time of contracting.

Rule 15: **Home Fuel Oil Sales, Delivery and Service Contracts**

The following Rules and Regulations are adopted pursuant to the Nassau County Administrative Code and violations of which shall constitute a specific unconscionable trade practice. In addition to applicable laws, these Rules and Regulations shall apply to all contracts for the sale and delivery of home fuel oil and for the maintenance and repair of oil burners and boilers.

1. All contracts for sales, delivery or service shall state and contain all material terms of the agreement, including all fees and costs, above the signature lines of the agreement. There shall be no requirement of the 3-day notice of cancellation for oil burner service and maintenance contracts.

2. For multi-year fuel oil delivery contracts, not given as an incentive for the sale of equipment, the price per gallon for oil must be stated either as a fixed dollar amount in cents per gallon, or stated as a relationship to the average Long Island Region Price for Home Heating Oil as published by the New York State Energy Research and Development Authority (NYSERDA) found on their website, www.nyserda.org, and no other index shall be used.

3. No contract for sales, delivery or service shall disclaim or shift to the buyer the seller=s liability for damages caused by the action or inaction, intentional or negligent, of the seller, or his agents. This regulation does not prohibit clauses that limit liability to a stated monetary amount.

4. No contract for sales, delivery or service shall make the buyer liable to the seller for acts of the seller=s employees.

5. No contract for sales, delivery or service shall contain language that diminishes the buyer=s rights in the event of litigation including, but not limited to, a waiver of the buyer=s right to assert counterclaims or equitable defenses, except that the parties may agree to waive their right to a trial by jury.

6. Terms of agreements to supply and deliver oil and the agreement to supply oil burner service must run concurrently if

signed on the same date. This section shall not apply to any agreement in which there is no penalty for early termination of the service contract.

7. The provisions of the service contract must be stated on a separate document. This document must disclose the annual price of the service contract, the parts that are covered, labor charges covered, and the hours during which service will be provided without additional charges or penalties. If any additional charges are assessed for service after certain hours or on certain days the amount for such service must be at the company's prevailing labor rate.

8. Any penalty for cancellation of a contract prior to the stated term of the contract shall be disclosed in a fixed dollar amount, in 10-point bold-face type and located just above the customer's signature line.

9. No fixed or capped price oil delivery contract can be renewed without a new written agreement signed by the parties and which conforms to these rules and New York law. This includes any changes made to the penalty clause. The term **Written agreement** shall include email confirmation and electronically signed contracts, including recorded telephonic contracts.

Rule 16: Swimming Pool and Spa Contractors and Builders

1. All Pool & Spa Contractors must use licensed plumbers and licensed electricians where required.
2. All Pool & Spa Contractors must have a back flow certification/license where required.
3. Five years of experience and a CBP (certified building professional certification) or equivalent certification is required for pool & spa builders.
4. Five years of experience and a CST (certified service technician) , a CSP (Certified Service Professional) or equivalent certification is required for Pool & Spa Contractors who make repairs or perform maintenance on equipment.
5. Five years of experience or a CMS (certified maintenance specialist) certification is required for those who are seasonal contractors who perform pool cleaning on a designated route.

Rule 17:

No contractor shall permit his license and/or license number to be used by another.

Rule 18:

Every contractor, except the Landscaper/Gardener licensee shall provide this office with a Lead Certification Certificate received from an approved course provider.

Rule 19:

Any licensee that performs mold remediation services and is not required to also hold an Environmental Hazard Remediation Provider License, must provide to this office a copy of the following certifications:

- | | |
|------------------------------|---|
| 1. Microbial Remediation. | Minimum 24 hours. |
| 2. Water Damage Restoration. | Minimum 20 hours, or IICRC WRT Certification. |

Rule 20:

A licensed contractor shall not work as a subcontractor for an unlicensed contractor.

Rule

21:

A licensed contractor shall not use an unlicensed subcontractor.