

LOCAL LAW NO. "N" FOR 2010

**A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK ENTITLED
THE ALBANY COUNTY CONSUMER PROTECTION LAW**

Introduced: 12/6/10

By Mr. Steck:

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF ALBANY, as follows:

Section 1. Sale of consumer services.

1. It shall be a violation of this local law for any merchant or other person engaged in the sale of consumer services to be performed in the future to fail to conspicuously set forth in any contract, order form, receipt or other written memorandum a date to commence and a date to complete the performance of the service.
2. Should the services not be performed as set forth in Section 1, the consumer shall have the right (a) to cancel the services or (b) agree to an extension of time confirmed in writing countersigned by the consumer.
3. Any such extension or cancellation must be confirmed in writing within 14 days of the expiration of the date for performance.
4. Should the contract be cancelled or should the consumer not confirm agreement to an extension, the consumer shall be entitled to a full refund for any uncompleted portions of the work that are unbilled at the time of the cancellation, providing the consumer has paid in advance therefore.

Section 2. Filing required by persons engaged in the home improvement business.

1. It is hereby declared and found that because of the increase in complaints by residential dwellers in the County of Albany about abuses on the part of home improvement contractors, it has become desirable to safeguard and protect such residents by providing information about home improvement, remodeling and repair businesses and contractors. The availability of such information will protect and promote the health, safety and welfare of the residents of the County of Albany. Residents will have increased information which they can use in their decisions relation to hiring home improvement, remodeling and repair businesses and contractors.

2. "Contractor" means any person who owns, operates, maintains, controls, transacts or conducts a home improvement business or who undertakes or advertises a home improvement service or offers to undertake or agrees to perform any home improvement.
3. "Home improvement" means a repair, replacement, remodeling, installation, construction, alteration, conversion, modernization made to, in or upon a private residence, apartment or dwelling place of not more than three units.
4. "Home improvement business" means the business of providing for a profit, a home improvement to an owner; provided, however, the term shall not include labor or services performed by an employee for a contractor.
5. "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 or performed there under, either directly by the contractor or by another person under separate agreement with the contractor.
6. "Owner" means a homeowner, tenant, or any other residential dweller who orders, contracts for, or purchases a home improvement.
7. "Person" means an individual, firm, company, partnership, association, corporation or other business entity.
8. "Affiliate" shall mean any business controlling or controlled by, or under common control with a home improvement business or contractor or the principal of the business as set forth in section 3(6)(e). The terms "control", "controlled" or "controlling shall mean the possession, direct or indirect, of the power to cause the direction of management and policies of, the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or the possession of the right to vote, in the ordinary direction of its affairs, of fifty-one percent (51%) of the voting interest in such business or contractor.

Section 3. Filing Required; Home Improvement Business.

1. No person shall maintain, conduct, advertise, operate, or engage in the home improvement business within the County of Albany, or hold himself or herself out as being able to do so, unless such person has filed with the Albany County Clerk an affidavit of qualifications as provided herein.

2. The County Clerk shall maintain a file of all persons who have filed the requisite affidavit. Each affidavit shall be available for inspection by the public through the web site of the County of Albany.
3. Consumers shall have the opportunity to file on-line complaints against any such home improvement business. Provided, however, that the home improvement business shall be given notice of the complaint and an opportunity to file a rebuttal. Provided further that the home improvement business shall also be given the opportunity to provide references in support of the quality of its work.
4. A fee of \$100 shall be filed together with the affidavit.
5. The affidavit shall be updated and/or reconfirmed every two (2) years on the anniversary date of the filing.
6. The affidavit shall contain the following information:
 - a. The type of ownership of the business. Whether it is a sole proprietorship, partnership, corporation, or limited liability company.
 - b. The name of the company.
 - c. Any doing business as (D/B/A), Trade, or Display Name if different than the name in Section 6b.
 - d. The business address and phone number of the business.
 - e. The name of the owner, majority partner, president, or managing director.
 - f. For the person set forth in Section 6e, his or her:
 - i. Date of Birth
 - ii. Driver's License Number
 - iii. Title
 - iv. Home Street Address
 - v. Home Phone
 - vi. Email Address
 - g. List each additional responsible individual involved with the company who is authorized to estimate, negotiate and/or finalize contracts.
 - h. State all types of work this company engages including all of the following:
 - i. Carpentry
 - ii. Chimney Work

- iii. Kitchen/Bath
- iv. HVAC
- v. Landscaping
- vi. Gardening
- vii. Masonry
- viii. Painting
- ix. Tree Removal
- x. Paving
- xi. Pools
- xii. Roofing
- xiii. Siding
- xiv. Tile
- xv. Windows
- xvi. Other (specify)

- i. State whether the company or the personnel doing the work hold any licenses. If so state the type of license and provide a copy.
- j. State whether the company or any affiliate arranges or facilitates the financing of home improvement contracts.
- k. State whether the applicant or any principal in the company has ever been convicted of any crimes involving violence or dishonesty.
- l. State whether the company, any other current or previously owned company or any principals in the company ever had a trade license denied, revoked or suspended. If in the affirmative, state the type of license, jurisdiction, and reason.
- m. State whether there are any outstanding unsatisfied business-related judgment(s) against the business named herein, any affiliated businesses, or its principals. If in the affirmative, state the amount and nature of the judgment.
- n. State whether there are any outstanding unsatisfied business-related judgment(s) against the business or any other current or previously owned business or corporation that is affiliated with the business. If in the affirmative, state the amount and nature of the judgment.
- o. State whether there has ever been a bankruptcy filing by this company, any other current or previously owned affiliated company or its principals in the last 10 years.
- p. State whether this company applies pesticides.

- q. A detailed self-written work history for the past 5 years, documenting any employment or training in the home improvement/construction industry, specifying the name and address of prior employers.
7. Copies of the following documents shall be submitted together with the affidavit.
- a. Business Certificate, Partnership Certificate, Articles of Organization, Certificate of Incorporation, and/or Certificate of Assumed Name where applicable.
 - b. Liability insurance certificate with scope of work covered under the policy and any work excluded from the policy.
 - c. New York State Workers' Compensation Insurance Certificate (Form U-26.3 OR C-105.2) and New York Disability Insurance Certificate (Form DB-120.1 or DB-155), or, if exempt from Workers' Compensation and Disability Insurance, Form CE-200 from the New York State Workers' Compensation Board. (If the company engages in paving, roofing or siding work, or is a general contractor, it must carry workers' compensation insurance)
 - d. A clear copy of a valid photo driver's license from the state in which the person listed in Section 3(6)(e) resides.
 - e. Proof of the current home street address, if different from the driver's license, for such person. Acceptable proof of address is a lease, mortgage statement, homeowners insurance bill, utility bill, or vehicle registration. Cell phone bills and credit card statements are not acceptable.
 - f. Copies of any New York State Dept of Environmental Conservation certifications held.
8. The affidavit shall contain a statement as follows: "I hereby swear that all of the information on this form and any attachment is true and accurate. I hereby acknowledge that false statements made in this document are punishable as a Class A Misdemeanor pursuant to §210.45 of the Penal Law."
9. The County Clerk must be notified in writing of any material change in the information disclosed in this affidavit within fourteen (14) days of the change.

10. The County Clerk shall have the power to prescribe a form affidavit or an electronic form for submitting the information required by this local law.

Section 4. Required Business Terms.

1. The County Clerk shall provide all businesses filing with the County under this law with a copy of the following required business terms:
 - a. All contracts must contain the complete name, address and telephone number of any principal of the company listed in the aforementioned affidavit.
 - b. Any home improvement contract that exceeds \$500 must be in writing and signed by all parties to the contract.
 - c. All contracts must contain a date to commence work and a date to complete work under the home improvement contract.
 - d. All contracts must state in writing the consumer may cancel the contract at any time prior to midnight of the third business day after the contract is signed.
 - e. All contracts must contain the lien notification as required by the New York State General Business Law.
 - f. All deposits taken in anticipation of doing work under a home improvement contract shall be deposited in an escrow account.
 - g. There may be other regulations applicable to the business. For example, the Environmental Protection Agency (EPA) requires any contractor performing renovation, repair and/or painting projects that disturb lead-based paint in homes built before 1978 to be certified and to follow lead-safe work practices to prevent lead contamination. The EPA also requires that all leaf blowers used in the course of business meet EPA exhaust emission standards.

Section 5. Penalties and Enforcement.

1. Any contract entered into without making the filing required in this law shall be voidable at the option of the homeowner.
2. If the consumer elects to void the contract, and the consumer has paid in advance for the work, any portion of the work that is unbilled at the time of the violation shall be returned to the homeowner.

3. A homeowner shall have a private right of action to enforce this law and, if such homeowner is the prevailing party in any such action, shall recover the attorneys' fee, costs, and disbursements of such action from any home improvement business or contractor found not to have complied with this law.
4. Any police officer within Albany County shall have the authority to direct a contractor who is not in compliance with this law to comply within 30 days.
5. If such compliance is not effected, the contractor shall be guilty of a violation and shall be subject to a fine of \$250.

Section 6. Other Licenses or Laws.

1. This law shall not effect or diminish in any way the obligation of the contractor to obtain any license required under separate provisions of State or Local Law.
2. Nothing in this law 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 contractors including a system of permits and inspections that are designed to secure compliance with and aid in the enforcement of applicable State and local building laws, or to enforce other laws necessary for the protection of the public health and safety.
3. Nothing in this Article shall be construed to limit or restrict 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 or the installation of or inspection of work done.

Section 7. No Waiver.

The provisions of this Article are intended for the protection of an owner and shall not be subject to waiver by an owner in a home improvement contract or otherwise.

Section 8. Severability.

If any clause, sentence, paragraph or part of this law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy and in which such judgment shall have been rendered.

Section 9. Miscellaneous.

1. Nothing set forth in this law shall subject the County of Albany or its officials, agents or employees to liability for damages or otherwise arising out of or related to the conduct of any home improvement business or contractor.
2. The provisions of this Article shall not apply to any home improvement to be performed under a home improvement contract made prior to the effective date of this law.
3. Persons not engaged in the home improvement business in Albany County on the effective date of this Article may commence such business upon compliance with this law.
4. This Local Law shall take effect April 1, 2011.

Referred to Public Works Committee. 12/6/10