

## LOCAL LAW NO. "L" FOR 2010

### A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK REQUIRING HOME IMPROVEMENT BUSINESSES TO BE LICENSED TO CONDUCT BUSINESS IN ALBANY COUNTY

Introduced: 10/12/10

By Mr. Domalewicz:

BE IT ENACTED AS FOLLOWS:

#### SECTION 1. Legislative purpose and intent.

It is the intent of the Legislature in enacting this local law to assist, safeguard and protect the homeowner against potential abuses on the part of certain home improvement businesses by regulating the home improvement, remodeling and repair business and by licensing persons engaged in such business. Such licensing will protect and promote the health, safety and welfare of the residents of the County of Albany. By meeting the minimum standards for licensing, Albany County residents may determine that the licensed home improvement business has taken an initial step to exhibit evidence of good faith and stability which is a minimum necessity of any reputable business. It is further the intent of this Legislature to protect consumers in Albany County by providing a means of filing complaints against home improvement businesses and to offer homeowners the ability to review complaints, if any, which have been filed against a home improvement business prior to authorizing any home improvement work to be done. In addition to receiving complaints from homeowners, the Department of General Services will also enable home improvement businesses to respond to complaints filed. Albany County residents will be able to review responses from the home improvement businesses to any complaints filed.

#### SECTION 2. Definitions.

As used in this local law, the following terms, unless the context requires otherwise, shall have the following meanings:

1. "Commissioner" means the Commissioner of the Albany County Department of General Services.

2. "Owner" means an Albany County resident who is a: homeowner, co-operative shareholder owner, or residential tenant, or any other person who orders, contracts for, or purchases the home improvement services of a home improvement business, or the person entitled to the performance of the work of a home improvement business pursuant to a home improvement contract.

3. "Home improvement" means the repairing, remodeling, altering, resurfacing, converting, or modernizing of, or adding to, residential property and shall include, but not be limited to, the construction, erection, replacement, or improvement of driveways and walkways, kitchens, bathrooms, swimming pools, siding, gutters,

awnings, insulation, waterproofing, chimney maintenance, painting, roofing, windows, terraces, patios, decks, fences, porches, garages, solar energy systems, flooring, basements, carports, additional rooms, and other improvements of the residential property and all structures or land adjacent to it. "Home improvement" shall also mean the installation of home improvement goods or the furnishing of home improvement services. "Home improvement" shall not include:

- a. plumbing work;
- b. electrical work;
- c. architectural services;
- d. work or services performed by a person within the scope of an occupation, craft or profession in which such person has met standards of competency or experience established by State law as a condition to engaging in the occupation, craft or profession;
- e. full-time students under the age of twenty-two (22) engaged in seasonal or part-time employment;
- f. the construction of a new home building;
- g. 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;
- h. work performed upon a residence or building owned by or controlled by the State or any municipality;
- i. the sale or installation of appliances, such as stoves, refrigerators, freezers, room air conditioners, dishwashers, clothes washers or dryers, which are designed to be removable from the premises without material alteration thereof;
- j. the performance of repairs, replacements, or other services pursuant to an express or implied warranty, or a maintenance agreement as defined by the New York State General Business Law.

4. "Home improvement goods or services" means goods and services which are bought in connection with home improvement. Such home improvement goods and services include burglar alarms, texture coating, fencing, air conditioning, heating equipment, and any other goods which, at the time of sale or subsequently, are to be so affixed to real property by the home improvement business as to become a part of real property whether or not severable therefrom.

5. "Home improvement business" means a person, firm or corporation which owns or operates a home improvement business or who undertakes, offers to undertake or agrees to perform any home improvement for a fee and for whom the total cash price of all of his home improvement contracts with all his customers exceeds one thousand five hundred (\$1,500) dollars during any period of twelve consecutive months. Home improvement business does not include a person, firm, corporation, landlord, cooperative corporation, condominium board of managers, joint tenant or co-tenant that owns, in whole or in part, the property to be improved.

6. "Home improvement contract" means an agreement for the performance of home improvement, between a home improvement business and an owner, and where the aggregate contract price specified in one or more home improvement

agreements, including all labor, services and materials to be furnished by the home improvement business, exceeds five hundred (\$500) dollars.

7. "Licensee" means a person licensed to engage in the home improvement business under the provisions of this local law.

8. "Person" means an individual, firm, company, partnership, association, corporation or other business entity.

9. "Affiliate" shall mean any person controlling, controlled by, or under common control with a licensee or contractor. 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 such controlled person. 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, any person shall be presumed to constitute such control.

### SECTION 3. License Required; Home Improvement Business Requirements.

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 is licensed pursuant to this local law.

An application for a license under this local law, or a renewal thereof, shall be made in writing to the Commissioner in accordance with such procedures, providing such information and on such forms as the Commissioner may from time to time require. The application shall be signed by the applicant.

The following requirements must be met for any home improvement business to be eligible for a license in Albany County:

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. An applicant for a home improvement business license must establish that the applicant is the real owner and possesses title to or is entitled to the possession of the establishment and will conduct, engage in and transact a home improvement business. The applicant must furnish a copy of the applicable form of organization being licensed. (e.g. Corporation, Partnership, D/B/A)

3. All applicants must furnish certificates of general liability and property damage insurance in the amount of at least 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. Each certificate must remain valid during the entire term of the license period.

Renewal certificates of insurance must be submitted to the Department of General Services within ten business days of the expiration of each policy.

4. The Commissioner may require an application for a license 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 or cash security in an amount to be set by the Commissioner not to exceed fifty thousand dollars (\$50,000), conditioned upon the assurance that during the term of such license, the contractor will continue to comply with the provisions of this local law, to assure that upon default in the performance of any contract, the advance payment made thereon, less the reasonable value of services actually rendered to the date of the contract in the event of noncompletion thereof, will be refunded to the consumer, owner, or lessee with whom such contract was made. Such bond shall run to the County of Albany for the use and benefit of any person or persons intended to be protected thereby. The required bond, after the aforementioned approval by the County Attorney, shall be filed in the Office of the Commissioner. The Commissioner may require a bond at any time during the term of the license based on the licensee's performance during such term.

5. Each home improvement contract entered into by a Licensee shall be in writing, signed by the Licensee and the Owner and shall specify the labor, services and materials to be furnished by the home improvement business.

#### SECTION 4. Licenses - Duration; Assignments; Display; Duplicates.

1. The license to conduct a home improvement business shall be for a period of two (2) years and each renewal thereof shall be for two (2) years. The Commissioner may impose a penalty of twenty-five (\$25) dollars upon a renewal application received by the Commissioner later than fifteen (15) days prior to the expiration date of the license sought to be renewed. The fee for issuing a duplicate license for one lost, destroyed or mutilated shall be twenty-five (\$25) dollars.

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 a 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 twenty-five (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.

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

4. A duplicate license may be issued for one lost, destroyed or mutilated upon application therefor on a form prescribed by the Commissioner. 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.

5. A supplementary license may be issued for each additional place of business maintained by a licensed person within the County of Albany upon application therefor on a form prescribed by the Commissioner. Each such supplementary license shall have the word "supplementary" stamped across the face thereof and shall bear the same name as the original.

#### SECTION 5. Powers and duties of the Commissioner.

In addition to the powers and duties prescribed in this local law, the Commissioner shall have the following powers and duties:

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

2. To keep records of all licenses issued, complaints filed and home improvement business complaint responses.

3. To respond to Albany County resident inquiries regarding home improvement businesses by indicating whether the business is currently licensed and, upon request, by making copies available of complaints pertaining to the business in question, if any, and corresponding responses from said business, if any.

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

#### SECTION 6. Issuance and renewal of licenses.

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 the appropriate home improvement business license to the applicant. If the application for a license is incomplete, the Commissioner shall send to the applicant a written statement setting forth the reasons for refusal to grant the license. The Commissioner may, after providing notice and an opportunity to be heard, revoke the license or deny the application for a license renewal that fails to comply with any of the requirements of this local law.

2. The Commissioner shall prescribe and furnish such forms as he may deem appropriate in connection with applications for licenses and renewals thereof.

3. An applicant for any license required by the provisions of this local law 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, history of the 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. The Commissioner shall grant the license or renewal unless the Commissioner determines that the applicant:

- a. is not financially responsible;
- b. is unqualified to engage in the home improvement business;
- c. has made a false statement of a material fact in the application for a license under this local law;
- d. has outstanding against it on a recurrent basis unsatisfied home improvement business-related judgments.
- e. has against it an unacceptable amount of home improvement complaints as determined by the Commissioner.

5. Every home improvement business licensed 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. The failure to notify the Commissioner of any such change shall constitute a violation of this local law.

#### SECTION 7. Denial of License or Renewal.

1. A denial of a license or renewal shall be made by the Commissioner in writing and shall set forth a statement of the reason or reasons therefor and shall be subject to administrative and judicial review in accordance with Subdivision two of this Section.

2. Within thirty (30) days after a denial of an application for a license or a renewal thereof, the applicant shall be entitled to demand a hearing before the Commissioner by making a written demand therefor. Following receipt of such written demand, a hearing shall be held by the Commissioner, or by a deputy designated by the Commissioner, or by such other person or persons designated by the Commissioner. A record of such hearing shall be made. At such hearing the applicant may be represented by counsel and may offer evidence in his or her behalf to demonstrate that a license or renewal should be granted. Compliance with technical rules of evidence shall not be required. If a deputy or other person or persons is designated to hold the hearing, such deputy or other designated person or persons shall refer the record and recommendations to the Commissioner for determination. The determination made by the Commissioner shall be subject to

judicial review in accordance with local law 78 of the Civil Practice Law and Rules in a proceeding brought within four (4) months after the determination is rendered.

## SECTION 8. Revocation or Suspension of License.

1. In accordance with the procedure set forth in Subdivision two of this Section, the Commissioner may revoke, or upon such conditions as the Commissioner deems appropriate, suspend for a period of time, a license issued under this local law, provided, however, that no revocation or suspension imposed hereunder shall be construed to impair or preclude a licensee's obligation to complete home improvement contracts in existence on the date such revocation or suspension otherwise becomes effective. On the effective date of such revocation or suspension the licensee shall furnish the Commissioner with a written list of such home improvement contracts with respect to which licensee is under a legal obligation to perform, in accordance with procedures authorized by this local law.

2. Grounds for suspension or revocation shall include:

- a. grounds to deny a license or renewal under this local law;
- b. failure by the licensee to fully and satisfactorily perform or furnish any labor, services or materials included under a home improvement contract.
- c. the commission by a licensee of an act or acts in violation of this local law.

3. The licensee shall be given written notice by the Commissioner of the commencement of the revocation or suspension proceeding and a copy of the charges upon which the proceeding is brought. Service may be made by ordinary mail to the address given in the application made by the licensee for a license under this local law. The licensee shall answer the charges in writing within ten (10) days. A hearing on such charges shall be held by the Commissioner or a deputy designated by the Commissioner, or by such other person or persons designated by the Commissioner. A record of such hearing shall be made. At such hearing the licensee may be represented by counsel and may offer evidence in his or her behalf. Compliance with technical rules of evidence shall not be required. The burden of proving the charges by substantial evidence shall be upon the Commissioner. If a deputy or other person or persons is designated to hold the hearing, such deputy or other designated person or persons shall refer the record and recommendations to the Commissioner for determination. The determination made by the Commissioner shall be subject to judicial review in accordance with local law 78 of the Civil Practice Law and Rules in a proceeding brought within four (4) months after the determination is rendered.

## SECTION 9. Violations.

1. It shall be a violation to:

- a. Abandon or fail to perform, or furnish, without justification, any labor, services or materials included under a home improvement contract, or willfully deviate from the plans or specifications of a home improvement contract in any material respect without the consent of the owner;

b. Conduct a home improvement business in any name other than the one in which the person is licensed;

c. Fail to agree that the owner may cancel by written notice the home improvement contract without penalty at any time prior to midnight on the third business day after the date such contract is made;

d. Make a false statement or provide false information in making application for a license, including a renewal or duplicate license;

e. Fail to notify the Commissioner, in writing, of any change of control in the ownership, management or business name or location of a home improvement business within ten (10) days thereof;

f. Fail to disclose on all advertising for a home improvement business and in all contracts with an owner for a home improvement the number of the license issued under this local law;

g. Fail to comply with the provisions of this local law.

2. The foregoing acts are unlawful when committed by a person engaged in the home improvement business within the County of Albany and violations of the provisions of this local law proscribing certain acts shall be enforced in accordance with penalties established by the Commissioner.

#### SECTION 10. Criminal Penalties.

Any person who shall maintain, conduct, operate or engage in a home improvement business within the County of Albany without a license as required under this local law or who continues to conduct a home improvement business after such license has been denied, suspended, revoked or has expired shall be guilty of a Class A misdemeanor.

#### SECTION 11. Other Licenses.

1. A license issued pursuant to this local law shall not be construed to authorize the licensee to perform any particular type of work or kind of business that is reserved to qualified licensees under separate provisions of State or local law.

2. Nothing in this local law shall be construed to limit or restrict the power of a city, town or village to license or 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. Nothing in this local law 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 of the installation of or inspection of work done.

#### SECTION 12. No Waiver.



The provisions of this local law 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 13. Severability.

If any clause, sentence, paragraph or part of this local 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 14. Miscellaneous.

1. Nothing set forth in this local 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 by a licensee.

2. The provisions of this local law shall not apply to any home improvement to be performed under a home improvement contract made prior to the effective date of this local law.

3. Persons engaged in the home improvement business in Albany County on the effective date of this local law who have applied for licenses hereunder may continue to engage in such business while their license applications are processed. Persons not engaged in the home improvement business in Albany County on the effective date of this local law may commence such business upon filing a license application in accordance with this local law.

#### SECTION 15. Effective date.

This local law shall take effect April 1, 2011.

*Referred to Public Works Committee. 10/12/10*

*Without Recommendation – Public Works Committee. 4/26/11*

*Referred to Law Committee. 5/9/11*

*Favorable Recommendation – Law Committee. 6/27/11*

*Referred to Law Committee. 7/11/11*