

NOTICE OF PUBLIC HEARING

- Subject:** Opportunity to comment on proposed amendments regarding the ability of the Department of Consumer Affairs to invade the Home Improvement Business Trust Fund to satisfy a fine imposed on a contractor.
- Date / Time:** April 9, 2012 at 12:00 p.m.
- Location:** Department of Consumer Affairs
66 John Street, 11th floor hearing room
New York, NY 10038
- Contact:** Erik Joerss
Director of City Legislative Affairs
Department of Consumer Affairs
42 Broadway, 8th floor
New York, N.Y. 10004
(212) 487-4248

Proposed Rule Amendment

Pursuant to the authority vested in the Commissioner of the Department of Consumer Affairs by section 2203 of the New York City Charter and sections 20-104(b) and 20-391 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, the Department of Consumer Affairs (DCA) proposes to amend an existing rule regarding DCA's ability to invade the Home Improvement Business Trust Fund (the Fund) to satisfy a fine imposed on a contractor.

This proposed rule was not included in the Department's most recent regulatory agenda because the need for it was not anticipated at the time the agenda was compiled.

Instructions

- Prior to the hearing, you may submit written comments about the proposed amendment to Mr. Joerss by mail or electronically through NYCRULES at www.nyc.gov/nycrules by April 9, 2012.
- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact the Office of the Commissioner at the above contact address by March 26, 2012.
- Written comments and a summary of oral comments received at the hearing will be available after the hearing at Mr. Joerss's office.

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 proposed 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 proposed rule 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.

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this Board, unless otherwise specified or unless the context clearly indicates otherwise.

Deleted material is in [brackets].

New matter is underlined.

PROPOSED 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



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LAW DEPARTMENT
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MEMORANDUM

TO: ERIK JOERSS
Department of Consumer Affairs

FROM: LEE WELLING
Division of Legal Counsel

RE: AMENDMENT OF RULES GOVERNING HOME IMPROVEMENT
BUSINESS TRUST FUND
No.: 2011 RG 120

I have reviewed the above-referenced proposed rule and am returning it having given it preliminary approval.

Please note that this memorandum does not constitute Law Department approval of the rule pursuant to City Charter § 1043, subd. c. The Law Department will issue such approval after we receive and review the text of the final rule. If you have made revisions to the text of the final rule please submit two copies of the final rule and note on one copy the changes adopted.

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007

