

## **New York City Department of Consumer and Worker Protection**

### **Notice of Adoption**

Notice of Adoption to amend rules applicable to the Home Improvement Business Trust Fund (“Trust Fund”) to provide for the payment of outstanding awards owed to consumers by licensed home improvement businesses.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer and Worker Protection by Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department amends Title 6 of the Rules of the City of New York.

This rule was proposed and published on December 9, 2022. A public hearing was held on January 9, 2023 and one comment was received.

### **Statement of Basis and Purpose of Rule**

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is amending rules applicable to the Home Improvement Business Trust Fund (“Trust Fund”), which was established by 6 RCNY § 2-224 to provide for the payment of outstanding awards owed to consumers and fines owed to DCWP by licensed home improvement businesses.

The rule amends 6 RCNY § 2-224(b) to indicate that if the Trust Fund has been invaded to pay an outstanding award, the contractor’s license may be suspended or revoked, and the contractor will not be able to renew or reinstate their license until they have reimbursed the Trust Fund. The amendment also grants the Commissioner the discretion to bar such contractors from future participation in the Trust Fund where their license has been suspended.

The rule amends 6 RCNY § 2-224(c) to allow disbursements from the Trust Fund to a consumer to satisfy an arbitration award against a contractor, as well as for the amount a contractor has agreed to pay pursuant to a settlement agreement. The rule also removes the requirement that the contractor’s license be revoked prior to disbursement from the Fund.

The Department received one comment in response to the proposed rule that resulted in a change to these final rules to clarify that the Department does not conduct administrative hearings.

Sections 1043, 2203(f) and 2203(h)(1) of the New York City Charter and section 20-104 of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these rules.

New material is underlined.

[Deleted material is in brackets.]

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

Section 1. Section 224 of Chapter 2 of Title 6 of the Rules of the City of New York is amended as follows:

**§ 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 Section 93(h) of the 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 6 RCNY § 2-225, 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] and Worker Protection, 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 6 RCNY § 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] and Worker Protection, 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)] four of this subdivision and 6 RCNY § 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 6 RCNY § 2-224(c).

(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], or agreed upon settlement amounts. [In the event that a contractor's license is suspended, revoked, surrendered or the contractor fails to renew its license, and] If the Fund is invaded to pay an award, fine, [or] judgment [that was], or arbitration award rendered against such contractor, or a settlement amount 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. If the Fund is invaded pursuant to the provisions herein to pay an award, fine, judgment, or arbitration award rendered against a contractor, or a settlement amount, the Department may suspend, revoke, or refuse to renew such contractor's license 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 suspended, revoked, surrendered or the contractor fails to renew its license and the Fund invaded to pay an award, fine, [or] judgment [that was], or arbitration award rendered against such contractor, or a settlement amount 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] amounts to consumers and Departmental fines when:

(i) the Department has [conducted] (a) issued or received an administrative hearing decision that [results in] found that a home improvement contractor [is in violation of] violated a law, ordinance or regulation enforced by the Department; (b) settled a summons or petition that charged a home improvement contractor with the violation of a law, ordinance, or regulation enforced by the Department; (c) resolved a consumer complaint filed against a home improvement contractor with a settlement agreement; or (d) received written notice of a judgment, arbitration award, or settlement agreement against a home improvement contractor that relates to activities for which a license is required; and

(ii) [the contractor is ordered by] the Department [to] has demanded that the home improvement contractor pay an [award] amount in restitution to a consumer [, a Departmental fine or to satisfy a judgment or arbitration award] as set forth in the decision, settlement, judgment, or arbitration award required by subparagraph (i) of this paragraph; and

(iii) the contractor has failed to pay such [award] amount in restitution to a consumer, a Departmental award or fine or satisfy a judgment or arbitration award, within 30 days of the date of the Department's [order] demand for payment or as required by the terms of the settlement agreement; 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)] (ii) or (iii) of this paragraph and (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, arbitration award, or settlement amount that is rendered against: a licensee who has furnished a bond, pursuant to the Bond Requirement of 6 RCNY § 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 and shall be limited to no more than twenty-five thousand dollars for all awards, fines, [and] judgments, arbitration awards, or settlement amounts, 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, arbitration awards, or settlement amounts 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.