

New York City Department of Consumer and Worker Protection
Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to amend rules applicable to the Home Improvement Business Trust Fund (“Trust Fund”) to provide consumers with limited restitution from the home improvement business trust fund in circumstances where mediation is unsuccessful.

When and where is the hearing? DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11:00AM on July 6, 2023. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial 646-893-7101
 - Meeting ID: 235 502 890 805
 - Passcode: ymwJm3

- To participate in the public hearing via videoconference, please follow the online link: <https://tinyurl.com/2drm3vkk>
 - Meeting ID: 235 502 890 805
 - Passcode: ymwJm3

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.

- **Email.** You can email comments to Rulecomments@dcwp.nyc.gov.

- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0396. You can also sign up on the phone or videoconference before the hearing begins at 11:00AM on Thursday, July 6. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before July 6.

What if I need assistance to participate in the hearing? You must tell DCWP’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may tell us by telephone at (212) 436-0396 or by email at Rulecomments@dcwp.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Thursday, June 29.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCWP on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCWP to make this rule? Sections 1043 and 2203(c) of the New York City Charter and sections 20-104, 20-115, and 20-391 of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules. This proposed rule was included in the Department of Consumer and Worker Protection's regulatory agenda for Fiscal Year 2024.

Where can I find DCWP's rules? The Department's rules are in title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCWP must meet the requirements of section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to amend 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 proposed rule would create an alternative grounds for invasion to allow disbursements from the Trust Fund in order to provide consumers with a streamlined process for access to limited restitution in circumstances where mediation is unsuccessful and the consumer has provided sufficient documentation to demonstrate the claim relates to the home improvement contractor’s failure to duly observe the laws, regulations, and rules governing the conduct of licensed home improvement contractors.

Sections 1043 and 2203(c) of the New York City Charter and sections 20-104, 20-115, and 20-391 of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed 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. Subdivision (d) of section 2-224 of Chapter 2 of Title 6 of the Rules of the City of New York is amended and a new subdivision (e) is added to read as follows:

(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.] Consumer Claims Process as Alternative Invasion of the Fund.

(1) Where a claim for restitution does not meet the requirements of subparagraph (i) of paragraph (1) of subdivision (c) of this section, the Commissioner may require that disbursements be made from the Fund to a consumer who has fully cooperated, participated, and completed mediation through the Department’s mediation process related to a claim against a home improvement contractor involving an alleged violation of a law, regulation, or rule enforced by the Department; provided, however, that such disbursements shall not be made if the consumer’s initial complaint to the Department was made prior to January 1, 2016 or if the balance of the Fund is less than five million dollars.

(2) Disbursements will not be made from the Fund to pay a claim against: a licensee who has furnished a bond, pursuant to the Bond Requirement of 6 RCNY § 2-225; or a home improvement contractor who was not licensed by the Department at the time of the contract.

(3) Disbursements from the Fund pursuant to this subdivision will be made at the discretion of the Commissioner or their designee and shall be limited to no more than five thousand dollars for all amounts arising out of a single home improvement contract. Prior to

disbursement from the Fund, the Commissioner or their designee may require a consumer to submit a claim in a form and format designated by the Commissioner, and provide documentation related to the claim, including but not limited to:

(i) A signed contract between such consumer and the home improvement contractor;

(ii) Evidence of any amounts paid to the home improvement contractor by the consumer or indebtedness incurred by the consumer as a result of a loan being paid by a lender to the home improvement contractor in the consumer's name;

(iii) Estimates, invoices, or amounts paid to another licensed home improvement contractor to fix or complete the work that was the subject of the contract;

(iv) A sworn and notarized statement detailing the claim, the amount of restitution the consumer is seeking up to five thousand dollars, and the basis for seeking such amount from the Fund; and

(v) A sworn and notarized statement specifying account credits, refunds or payments made to the consumer by the home improvement contractor or a third-party, including by an insurance company.

(4) The Commissioner or their designee will not direct disbursements to be made from the Fund to pay a claim against a home improvement contractor unless the consumer has provided sufficient documentation to show the claim relates to the home improvement contractor's failure to duly observe the laws, regulations, and rules governing the conduct of licensed home improvement contractors, including, but not limited to, Subchapter 22 of Chapter 2 of Title 20 the Administrative Code and Subchapter V of Chapter 2 of Title 6 of these rules.

(5) The Commissioner or their designee may order that partial payment of an amount related to the claim be made from the Fund.

(6) 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.

(7) 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.

(8) Nothing contained herein shall be construed to provide for the payment of claims related to personal injury.

(9) Disbursement from the Fund pursuant to this subdivision shall not be considered an award, fine, judgment, arbitration award, or settlement amount for the purpose of paragraph (5) of subdivision (b) of this section.

(e) 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.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Relating to Home Improvement Trust Fund

REFERENCE NUMBER: 2023 RG 026

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Senior Counsel

Date: May 30, 2023

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Rules Relating to Home Improvement Trust Fund

REFERENCE NUMBER: DCWP-33

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

May 30, 2023
Date