

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 consumers with limited restitution from the Trust Fund in circumstances where mediation is unsuccessful.

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 Sections 20-104(b), 20-115, and 20-391 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 June 6, 2023. A public hearing was held on July 6, 2023 and approximately 24 comments were 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 amended rule creates an alternative ground for invasion of 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.

The Department received approximately 24 comments in response to the proposed rule from consumers and consumer advocates. The Department has implemented changes to these final rules to respond to several issues raised in the comments. These changes include:

- Clarifying that whether a home improvement contractor cooperated, participated, or completed the Department’s mediation process shall have no impact on whether the Department considers the consumer to have fully cooperated, participated, and completed the Department’s mediation process;
- Increasing the maximum disbursement amount per claim from five thousand dollars to ten thousand dollars;
- Decreasing the minimum Trust Fund balance required to permit disbursements under the alternative process from five million dollars to two million dollars; and
- Clarifying that the Commissioner will direct a disbursement be made from the Trust Fund rather than make an award.

The Department will monitor this alternative invasion process on an ongoing basis to assess its continued feasibility, including monitoring the number of disbursements made, average disbursement amount, and Trust Fund balance.

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 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. Paragraph (6) of subdivision (c) of section 2-224 of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

(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] where the Commissioner directs a disbursement be made from the Fund pursuant to the provisions herein.

Section 2. 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 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 two million dollars. Whether a home improvement contractor cooperated, participated, or completed the Department's mediation process shall have no impact on whether the Department considers the consumer to have fully cooperated, participated, and completed the Department's mediation process.

(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 ten

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 ten 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 where the Commissioner directs a disbursement be made from the Fund pursuant to the provisions herein.

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

(9) Disbursements 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.