

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").

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer and Worker Protection ("DCWP" or "Department") by 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, 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 March 12, 2025. A public hearing was held on April 11, 2025 and comments were received from various members of the public.

These comments focused on additional ways to improve the consumer restitution claims process, mainly by increasing the number of hearings or otherwise resuming pro-se consumer cases before DCWP or the Office of Administrative Trials and Hearings. Some commenters also disagreed with the proposed pause on contributions to the Trust Fund and suggested further increasing the consumer restitution amount threshold. The Department has considered these comments and determined that no additional changes to the rule are necessary. The rules as drafted balance the goal of increasing consumer restitution while improving efficiency in management of the Trust Fund. Moreover, the procedural issues raised by commenters are beyond the scope of the present rulemaking.

Statement of Basis and Purpose of Rule

The Department of Consumer and Worker Protection 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 amendments make four changes:

First, the rule increases the maximum Trust Fund disbursement amount, in cases where the Department invades the fund pursuant to an administrative decision, settlement, judgment or arbitration award, from twenty-five thousand dollars to forty thousand dollars. This change will ensure recovery for those judgements or fines larger than twenty-five thousand dollars.

Second, the rule increases the maximum Trust Fund disbursement amount, in cases where a consumer seeks restitution pursuant to the Department's consumer claims process, from ten thousand dollars to twenty thousand dollars. This reflects the amount of restitution often sought in these claims.

Third, the rule allows consumers who first submitted complaints to the Department in 2015 to seek restitution pursuant to the consumer claim process. This change allows the Department to better capture claimants who did not have access to the Department's tribunal before it closed.

Finally, the rule eliminates the requirement for licensed home improvement businesses to contribute to the fund upon license renewal if the Trust Fund balance is over two million dollars.

As of November 2023, the Trust Fund held fifteen million dollars, and thus has sufficient funding to cover the increase in maximum disbursements for consumers and the Department, and to cover the additional claims related to complaints submitted in 2015. This rule decreases the financial burden on licensed home improvement businesses while ensuring that the Trust Fund can still meet the needs of aggrieved consumers.

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. Subdivisions (b), (c) and (d) of section 224 of chapter 2 of Title 6 of the Rules of the City of New York are amended to read as follows:

(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 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 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. Notwithstanding the foregoing, fund participants who elect to continue to participate in the Fund will not be required to contribute upon renewal of their license if, on the first of July the previous year, the Fund contains a balance of more than two million dollars. 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 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, fines, judgments, or arbitration awards rendered against a licensee, or agreed upon settlement amounts. If the Fund is invaded to pay an award, fine, judgment, 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, judgment, 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.

(c) *Invasion of the Fund.*

(1) The Commissioner may require that disbursements be made from the Fund to pay outstanding amounts to consumers and Departmental fines when:

(i) the Department has (a) issued or received an administrative hearing decision that found that a home improvement contractor 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 Department has demanded that the home improvement contractor pay an amount in restitution to a consumer 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 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 demand for payment or as required by the terms of the settlement agreement; and

(iv) 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 (ii) or (iii) of this paragraph and (1) require disbursements to be made from the Fund.

(2) Disbursements will not be made from the Fund to pay an award, fine, 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] forty thousand dollars for all awards, fines, 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, 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 where the Commissioner directs a disbursement be made from the Fund 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) *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] 2015 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] twenty 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 6 RCNY Chapter 2, Subchapter V.

(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.