

A LOCAL LAW amending Article XVI of Chapter 863 of the Laws of Westchester County in relation to the licensing of persons engaged in the home improvement business.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Section 863.312 of the Laws of Westchester County is hereby amended to read as follows:

Unless the context otherwise specifically requires, the following terms, when used in this Article, shall have the following meanings:

1. "Contractor" means any person who owns, operates, maintains, controls, transacts or conducts a home improvement business or who undertakes, facilitates or advertises a home improvement service or offers to undertake, facilitate or agrees to perform any home improvement. A person shall be deemed to facilitate a home improvement service when, for a fee, they organize, oversee, or arrange for other Contractors to perform home improvement services.

2. "Home improvement" means a repair, replacement, remodeling, installation, construction, alteration, conversion, modernization made to, in or upon a private residence, apartment or dwelling place of not more than three units, including, but not limited to the following:

- a. waterproofing;
- b. exterior siding, awnings, leaders and gutters;
- c. decks, patios, garages, carports and additional rooms;
- d. storm and/or replacement windows and doors;

- e. roofs;
- f. driveways and walkways;
- g. kitchens and bathrooms;
- h. masonry;
- i. fence installations;
- j. chimney maintenance;
- k. exterior and interior painting;
- l. landscaping and gardening;
- m. arboriculture;
- n. tile setters;
- o. swimming pools; [and]
- p. underground sprinkler systems;
- q. excavation; and
- r. other similar improvements.

3. “Home improvement business” means the business of providing for a profit, a home improvement to an owner, provided, however, the term shall not include labor or services performed by an employee for a contractor.

4. “Home improvement contract” means an agreement between a contractor and an owner for the performance of a home improvement, and includes all labor, services and materials to be furnished and performed there under, either directly by the contractor or by another person under separate agreement with the contractor.

5. “Leaf blower” means any portable device powered by a self-contained internal combustion engine, which is commonly used in landscaping and property maintenance to

blow, disperse or redistribute dust, dirt, leaves, grass clippings, cuttings, trimmings from trees or shrubs, or other debris on sidewalks, driveways, lawns, or other surfaces.

6. "Licensee" means a person licensed to engage in the home improvement business under the provisions of this Article.

7. "Owner" means a homeowner, tenant, or any other residential dweller who orders, contracts for, or purchases a home improvement.

8. "Person" means an individual, firm, company, partnership, association, corporation or other business entity.

9. "Affiliate" shall mean any person controlling, controlled by, or under common control with a licensee or contractor. The terms "control", "controlled" or "controlling shall mean the possession, direct or indirect, of the power to cause the direction of management and policies of such controlled person. The ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or the possession of the right to vote, in the ordinary direction of its affairs, of fifty-one percent (51%) of the voting interest in, any person shall be presumed to constitute such control.

Section 2. Section 863.313 of the Laws of Westchester County is hereby amended to read as follows:

1. No person shall maintain, conduct, advertise, operate, or engage in the home improvement business within the county of Westchester, or hold himself or herself out as being able to do so, unless such person is licensed pursuant to this Article.

2. Upon issuance of a home improvement license [to a landscaper or a gardener] under the provisions of this chapter, the Sealer shall issue a vehicle decal for each vehicle identified by the licensee as a vehicle which will be used in connection with the licensed activities. Such

vehicle decals shall be conspicuously displayed in or on the vehicle(s) used in connection with the licensed activities during the term of the license.

Section 3. Section 863.314 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 863.314. - Application for license or renewal; affirmation regarding leaf blowers.

1. An application for a license under this article, or a renewal thereof, shall be made in writing to the Sealer in accordance with such procedures, providing such information and on such forms as the Sealer may from time to time require. An application shall require any information the Sealer deems necessary to render a determination in accordance with this Chapter and shall, at a minimum, require the disclosure of any final and non-appealable civil, criminal, or administrative business related judgments incurred by the applicant, or by any business for which applicant was an owner, director, officer, member, or otherwise exercised control over the business. The application shall be signed by the applicant and shall be accompanied by a check, cash or money order in the amount of the fee required under section 863.315 of this article.

2. [a. Effective January 1, 2008, through December 31, 2008, a contractor, engaged in the business of landscaping, gardening, arboriculture, or any similar outdoor vocation, seeking to obtain or renew a license under this section, shall verify in writing that such contractor, its agent, affiliate or employee is aware of the requirements of Subsection 1 of Section 863.327 of this Chapter, and shall comply with such subsection when effective; and b. Effective January 1, 2009, a] A contractor, engaged in the business of landscaping, gardening, arboriculture, or any similar outdoor vocation, seeking to obtain or renew a license under this section, shall

verify in writing that such contractor, its agent, affiliate or employee is in compliance with Subsection 1 of Section 863.327 of this Chapter.

Section 4. Section 863.315 of the Laws of Westchester County is hereby amended to read as follows:

The non-refundable biannual fee for a license to conduct a home improvement business shall be [~~\$300.00~~] \$400.00, and for each renewal thereof the fee shall be [~~\$300.00~~] \$400.00. The license to conduct a home improvement business shall be for a period of two years and each renewal thereof shall be for two years. The Sealer may impose a penalty of \$25.00 upon a renewal application received by the Sealer later than 15 days prior to the expiration date of the license sought to be renewed. The fee for issuing a duplicate license for one lost, destroyed or mutilated shall be \$25.00.

Section 5. Section 863.316 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 863.316. - Grant or denial of license or renewal.

1. Within 90 days after receipt of a complete application in proper form, the Sealer shall grant or deny a license, or renewal thereof, under this article. The Sealer shall grant the license or renewal unless the Sealer determines that that applicant:

- a. Is not financially responsible. In making such a determination the Sealer shall take into consideration all final non-appealable determinations of liability in any civil, criminal or administrative actions involving nonpayment or underpayment of wages rendered by any local, state, or federal government court, agency, or division, including any such

determinations rendered against any business for which the applicant was an owner, director, officer, member, or otherwise exercised control over the business.

- b. Is unqualified to engage in the home improvement business;
- c. Has made a false statement of a material fact in the application for a license under this article;
- d. Has outstanding against it [on a recurrent basis] unsatisfied home improvement business-related judgments. In making such a determination the Sealer shall take into consideration all final non-appealable determinations of liability in any civil, criminal or administrative actions involving nonpayment or underpayment of wages rendered by any local, state, or federal government court, agency, or division, including any such determinations rendered against any business for which the applicant was an owner, director, officer, member, or otherwise exercised control over the business.
- e. Has against it an unacceptable amount of home improvement complaints as determined by the Sealer.

A denial of a license or renewal shall be made by the Sealer in writing and shall set forth a statement of the reason or reasons therefor and shall be subject to administrative and judicial review in accordance with subsection 2. of this section.

2. Within 30 days after a denial of an application for a license or a renewal thereof, the applicant shall be entitled to demand a hearing before the Sealer by making a written demand therefor. Following receipt of such written demand, a hearing shall be held by the Sealer, or by a deputy designated by the Sealer, or by such other person or persons designated by the Sealer. A record of such hearing shall be made. At such hearing the applicant may be represented by counsel and may offer evidence in his or her behalf to demonstrate that a

license or renewal should be granted. Compliance with technical rules of evidence shall not be required. If a deputy or other person or persons is designated to hold the hearing, such deputy or other designated person or persons shall refer the record and recommendations to the Sealer for determination. The determination made by the Sealer shall be subject to judicial review in accordance with Article 78 of the Civil Practice Law and Rules in a proceeding brought within four months after the determination is rendered.

Section 6. Section 863.319 of the Laws of Westchester County is hereby amended to read as follows:

1. It shall be a violation to:

a. Abandon or fail to perform, or furnish, without justification, any labor, services or materials included under a home improvement contract, or willfully deviate from the plans or specifications of a home improvement contract in any material respect without the consent of the owner;

b. Conduct a home improvement business in any name other than the one in which the person is licensed;

c. Fail to agree in writing that the owner may cancel by written notice the home improvement contract without penalty at any time prior to midnight on the third business day after the date such contract is made;

d. Make a false statement or provide false information in making application for a license, including a renewal or duplicate license;

e. Fail to notify the Sealer, in writing, of any change of control in the ownership, management or business name or location of a home improvement business within ten (10) days thereof;

f. Fail to disclose on all advertising, stationery, proposals, change orders, and invoices for a home improvement business and in all contracts with an owner for a home improvement, the number of the license issued under this Article[.];

g. Fail to comply with the provisions of Section 863.325 of this Article[.];

h. Fail to comply with the provisions of Sections 863.326, [and] 863.327 and 863.329 of this Article.

i. Operate a home improvement business without a license as required by this article.

2. The foregoing acts are unlawful when committed by a person engaged in the home improvement business within the County of Westchester and violations of the provisions of this Section proscribing certain acts shall be enforced in accordance with and shall be subject to the penalties provided in the Laws of Westchester County, including but not limited to Chapter 182, Article VIII of Chapter 277 and Article I of Chapter 863 thereof.

Section 7. Subdivision “5” of Section 863.324 of the Laws of Westchester County is hereby amended to read as follows:

5. The Sealer is empowered to establish administrative procedures to carry out the provisions of this Article in conformity with the provisions thereof. The Sealer shall require proof of [personal] liability and property damage insurance in an amount to be set by the Sealer [in an amount not to exceed \$300,000.00].

Section 8. Section 863.327 of the Laws of Westchester County, as added by Local Law No. 16-2007, is hereby amended, by renumbering it as Section 863.328, as follows:

[Section 863.327. Seizure and impoundment of vehicles and tools used in connection with the unlicensed operation of a home improvement business.]

Section 863.328. Seizure and impoundment of vehicles and tools used in connection with the unlicensed operation of a home improvement business.

Section 9. Article XVI of Chapter 863 of the Laws of Westchester County is hereby amended by the addition of a new Section 863.329 to read as follows:

Section 863.329. Contract provisions.

Every home improvement contract and all amendments thereto, shall be in writing and shall be signed by all the parties to the contract. The writing shall be legible, in plain English, and shall be in such form to describe clearly any other document which is to be incorporated into the contract. Before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor. The writing may also contain other matters agreed to by the parties to the contract.

The writing shall contain the following:

- (a) The name, address, telephone number and license number of the contractor.
- (b) The approximate dates, or estimated dates, when the work will begin and be substantially completed.
- (c) A description of the work to be performed, the materials to be provided to the owner, including make, model number or any other identifying information.
- (d) A notice to the owner purchasing the home improvement that the contractor or subcontractor who performs on the contract or the material man who provides home

improvement goods or services and is not paid may have a claim against the owner which may be enforced against the property in accordance with the applicable lien laws.

(e) A notice to the owner purchasing the home improvement that, except as otherwise provided in paragraph (g) of this subdivision, the home improvement contractor is legally required to deposit all payments received prior to completion in accordance with subdivision four of section seventy-one-a of the New York State lien law and that, in lieu of such deposit, the home improvement contractor may post a bond, contract of indemnity or irrevocable letter of credit with the owner guaranteeing the return or proper application of such payments to the purposes of the contract.

(f) If the contract provides for one or more progress payments to be paid to the home improvement contractor by the owner before substantial completion of the work, a schedule of such progress payments showing the amount of each payment, as a sum in dollars and cents, and specifically identifying the state of completion of the work or services to be performed, including any materials to be supplied before each such progress payment is due. The amount of any such progress payments shall bear a reasonable relationship to the amount of work to be performed, materials to be purchased, or expenses for which the contractor would be obligated at the time of payment.

Section 10. Article XVI of Chapter 863 of the Laws of Westchester County is hereby amended by the addition of a new Section 863.330 to read as follows:

Sec. 863.330 Complaints

The Sealer shall accept complaints from any person, relating to a Contractor or Home Improvement Business. In considering an application for a license or renewal under this Chapter, conducting any investigation, or determining whether to revoke a license granted under this Chapter, the Sealer may consider any complaints received.

Section 11. This Local Law shall take effect immediately, except for sections 6 and 9, which shall take effect 60 days from the date of enactment.