

**LAWS GOVERNING THE LICENSING OF
HOME IMPROVEMENT CONTRACTORS
IN WESTCHESTER COUNTY**

WESTCHESTER COUNTY CONSUMER PROTECTION CODE

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NEW YORK STATE LIEN LAW

SECTION 71-a

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ARTICLE IV. RETAIL SALE, RENTAL AND REPAIR OF GOODS

Section 863.111. Sale of consumer services.

1. It shall be violation of this code for any merchant or other person engaged in the sale of consumer services to be performed in the future to fail to:

- a. conspicuously set forth in any contract, order form, receipt or other written memorandum a date to commence and a date to complete the performance of the service; or
- b. commence and complete the performance of the service on the date or dates agreed upon with the consumer, unless:
 - (1). the consumer is notified in writing, or by oral communication confirmed in writing within one (1) day of the delay and the revised date of commencement and/or completion; and
 - (2). the consumer agrees to the revised dates,

2. If the merchant or other person providing the service shall fail to comply with the requirement to disclose a commencement and/or completion date as provided in Subdivision 1 of this section, or if the service has not been performed within the period of time disclosed, the consumer, at his option may:

- a. cancel the contract with full refund for uncompleted portions of the work providing the consumer has paid in advance thereof; or
- b. negotiate a new commencement and/or completion date with the merchant.

ARTICLE XVI. LICENSING OF PERSONS ENGAGED IN THE HOME IMPROVEMENT BUSINESS

Section 863.311. Legislative Findings.

It is hereby declared and found that because of the increase in complaints by residential dwellers in the County of Westchester about abuses on the part of home improvement contractors, it has become desirable to safeguard and protect such residents by regulating the home improvement, remodeling and repair business and by licensing persons engaged in such business. Such licensing will protect and promote the health, safety and welfare of the residents of the County of Westchester.

Section 863.312. Definitions.

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 or advertises a home improvement service or offers to undertake or agrees to perform any home improvement.
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 painting;
- l. landscaping and gardening;
- m. arboriculture;
- n. tile setters;
- o. swimming pools; and
- p. 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 863.313. License Required; Home Improvement Business.

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 and 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 the vehicle(s) used in connection with the licensed activities during the term of the license.

Section 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. 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 subsection when effective; and

2(b) Effective January 1, 2009, 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 or affiliate or employee is in compliance with Subsection 1 of Section 863.327 of this Chapter.

Section 863.315. Fees.

The bi-annual fee for a license to conduct a home improvement business shall be three hundred dollars (\$300.) and for each renewal thereof the fee shall be three hundred dollars (\$300.) The license to conduct a home improvement business shall be for a period of two (2) years and each renewal thereof shall be for two (2) years. The Sealer may impose a penalty of twenty-five (\$25.) dollars upon a renewal application received by the Sealer later than fifteen (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 twenty-five dollars (\$25.).

Section 863.316. Grant or Denial of License or Renewal.

1. Within ninety (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 the applicant:

- a. is not financially responsible;
- 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.
- 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 Subdivision two of this Section.

2. Within thirty (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 (4) months after the determination is rendered.

Section 863.317. Revocation or Suspension of License.

1. In accordance with the procedure set forth in Subdivision two of this Section, the Sealer may revoke, or upon such conditions as the Sealer deems appropriate, suspend for a period of time, a license issued under this Article, provided, however, that no revocation or suspension imposed hereunder shall be construed to impair or preclude a licensee's obligation to complete home improvement contracts in existence on the date such revocation or suspension otherwise becomes effective. On the effective date of such revocation or suspension the licensee shall furnish the Sealer with a written list of such home improvement contracts with respect to which licensee is under a legal obligation to perform, in accordance with procedures authorized by Section 863.324 (5) of this Article.

2. Grounds for suspension or revocation shall include:

a. grounds to deny a license or renewal under Section 863.316;

b. failure by the licensee to fully and satisfactorily perform or furnish any labor, services or materials included under a home improvement contract.

c. the commission by a licensee of an act or acts in violation of Section 863.319 of this Article.

3. The licensee shall be given written notice by the Sealer of the commencement of the revocation or suspension proceeding and a copy of the charges upon which the proceeding is brought. Service may be made by ordinary mail to the address given in the application made by the licensee for a license under this Article. The licensee shall answer the charges in writing within ten (10) days. A hearing on such charges shall be held by the Sealer or 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 licensee may be represented by counsel and may offer evidence in his or her behalf. Compliance with technical rules of evidence shall not be required. The burden of proving the charges by substantial evidence shall be upon the Sealer. 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 (4) months after the determination is rendered.

Section 863.318. License, Assignment.

Any license issued by the Sealer under this Article shall not be assigned or transferred by the licensee.

Section 863.319. Violations.

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 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 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 of 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 863.320. Criminal Penalties.

Any person who shall maintain, conduct, operate or engage in a home improvement business within the County of Westchester without a license as required under this Article or who continues to conduct a home improvement business after such license has been denied, suspended, revoked or has expired shall be guilty of a Class A misdemeanor.

Section 863.321. Other Licenses.

1. A license issued pursuant to this Article shall not be construed to authorize the licensee to perform any particular type of work or kind of business that is reserved to qualified licensees under separate provisions of State or Local Law.

2. Nothing in this Article shall be construed to limit or restrict the power of a city, town or village to regulate the quality, performance, or character of the work of contractors including a system of permits and inspections that are designed to secure compliance with and aid in the enforcement of applicable State and local building laws, or to enforce other laws necessary for the protection of the public health and safety. Nothing in this Article shall be construed to limit or restrict the power of a city, town or village to adopt any system of permits requiring submission to and approval by the city, town or village of plans and specifications for an installation prior to the commencement of construction of the installation of or inspection of work done.

3. Notwithstanding any provision of this Article to the contrary, this Article shall relate only to the area of the County of Westchester outside any city, village or area of any town outside the village or villages therein during such time as such city, village or town is regulating or licensing the home improvement business.

Section 863.322. No Waiver.

The provisions of this Article are intended for the protection of an owner and shall not be subject to waiver by an owner in a home improvement contract or otherwise.

Section 863.323. Severability.

If any clause, sentence, paragraph or part of this Article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy and in which such judgment shall have been rendered.

Section 863.324. Miscellaneous.

1. Nothing set forth in this Article shall subject the County of Westchester or its officials, agents or employees to liability for damages or otherwise arising out of or related to the conduct of any home improvement business by a licensee.

2. The provisions of this Article shall not apply to any home improvement to be performed under a home improvement contract made prior to the effective date of this Article.

3. Persons engaged in the home improvement business in Westchester County on the effective date of this Article who have applied for licenses hereunder may continue to engage in such business while their license applications are processed. Persons not engaged in the home improvement business in Westchester County on the effective date of this Article may commence such business upon filing a license application in accordance with Section 863.314 of this Article.

4. Notwithstanding any provisions of this Article to the contrary, this Article shall not apply to:

a. plumbing work;

b. electrical work;

c. architectural services;

d. work or services performed by a person within the scope of an occupation, craft or profession in which such person has met standards of competency or experience established by State law as a condition to engaging in the occupation, craft or profession;

e. full-time students under the age of twenty-two (22) engaged in seasonal or part-time employment;

f. the construction of a new home building;

g. the sale of goods or materials by a seller who neither arranges to perform nor performs directly or indirectly any work or labor in connection with the installation of or application of the goods or materials;

h. work performed upon a residence or building owned by or controlled by the State or any municipality;

i. the sale, leasing, maintaining, installing, repairing, altering, moving, replacing, or servicing of an alarm device or system by a County-licensed alarm business or alarm agent;

j. The installation of photovoltaic devices by an individual who is licensed as a master electrician pursuant to Article XVII of Chapter 277 of the Laws of Westchester County and who is also certified as an installer of photovoltaic devices by the North American Board of Certified Energy Practitioners. For the purpose of this paragraph "photovoltaic device" means a device that absorbs infrared, visible and/or ultraviolet light and produces electric potential;

k. The installation of solar heating devices by an individual licensed as a master plumber pursuant to Article XV of Chapter 277 of the Laws of Westchester County and who is also certified as an installer of solar heating devices by the North American Board of Certified Energy Practitioners. For the purposes of this paragraph "solar heating device" means a device that uses flat collector plates to harness the sun's energy to heat water.

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 set by the Sealer in an amount not to exceed three-hundred thousand dollars (\$300,000.).

6. The Sealer may require an application for a license to be accompanied by a bond, approved as to form by the County Attorney, executed by a bonding or surety company authorized to do business in the State of New York or cash security in an amount to be set by the Sealer not to exceed fifty thousand dollars (\$50,000.), conditioned upon the assurance that during the term of such license, the contractor will continue to comply with the provisions of this Article, to assure that upon default in the performance of any contract, the advance payment made thereon, less the reasonable value of services actually rendered to the date of the contract in the event of noncompletion thereof, will be refunded to the consumer, owner, or lessee with whom such contract was made. Such bond shall run to the County of Westchester for the use and benefit of any person or persons intended to be protected thereby. The required bond, after the aforementioned approval by the County Attorney, shall be filed in the Office of the Sealer. The Sealer may require a bond at any time during the term of the license based on the licensee's performance during such term.

7. Any licensee using chemicals regulated or controlled by the New York State Department of Environmental Conservation shall show proof of certification for use of said chemicals.

Section 863.325. Disclosures required of certain home improvement contractors; penalties.

1. If a licensee or an affiliate directly or indirectly arranges or facilitates the financing of a home improvement contract, then prior to executing the home improvement contract, said licensee must:

a. Disclose to the owner, in writing, any payments made or received by the licensee in connection with the financing, including the amount of such payments, on forms provided by the sealer;

b. Provide an appropriate Consumers' Bill of Rights, prepared by the sealer; and

c. Obtain the owner's written acknowledgement of receipt of the written disclosure of any payments and the appropriate Consumers' Bill of Rights on forms provided by the sealer.

2. Within five (5) business days of executing a home improvement contract, any licensee required to comply with the provisions of subdivision 1, must also file with the sealer:

a. A copy of the home improvement contract;

b. A copy of the owner's Acknowledgement of Receipt of the written disclosure and the appropriate Consumers' Bill of Rights.

3. In addition to the penalties set forth in sections 277.171, 277.181 and 863.52, the sealer may, after providing notice and an opportunity to be heard, revoke the license or deny the application for a license renewal that fails to comply with any of the requirements of this section.

Section 863.326. Vehicles to display name and address of landscaper or gardener.

1. All motor vehicles which are used in the normal course of business by landscapers or gardeners or their employees to deliver tools, materials or workers to a job site in Westchester County shall, while such vehicle is parked at the job site, display on both sides of the vehicle the names and address of the landscaper or gardener in letters and numerals readily legible from a distance of fifty feet during daylight hours and while the motor vehicle is stationary.

2. The requirements of this section may be complied with by permanently affixing the landscaper or gardener's name and address to the motor vehicle or by affixing removable signs to the motor vehicle to be displayed while such vehicle is parked at a job site and the landscapers and gardeners or their employees are engaged in the normal course of business in Westchester County.

*There are two (2) sections 863.327

Section 863.327. Leaf Blowers; Licensee Requirements.

1. Effective January 1, 2009, no licensee engaged in the business of landscaping, gardening, arboriculture, or any similar outdoor vocation, nor its agent, affiliate or employee, shall operate a leaf blower that does not

meet EPA Phase 2, 2007 exhaust emission standards or that does not operate in accordance with manufacturer's instructions or specifications.

2. Ninety days from the effective date of this local law, and to the extent practicable, the Sealer shall notify all licensees and applicants and provide:
 - (a) copy of this local law regarding the operation of leaf blowers by a contractor or licensee under this section; and
 - (b) a copy of EPA Phase 2, 2007 exhaust emission standards.
3. Nothing in this section shall be deemed to supersede any municipal ordinance or rule regulating the use of leaf blowers or any similar device.

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

1. Any police officer or authorized officer, employee or agent of the Department of Consumer Protection – Weights and Measures, upon service on the operator of a vehicle and/or person in possession of tools or implements of a notice of violation for operating without a license required by subdivision 1 of section 863.313 of this article, may seize and impound any vehicle, tool or other implement which such officer has reasonable cause to believe is being used in connection with such violation. Any vehicle, tool or implement seized pursuant to this section shall be delivered into the custody of the Department of Public Safety or Department of Consumer Protection – Weights and Measures.

2. A person from whom a vehicle, tool or implement has been seized and impounded pursuant to this section shall receive notice at the time of such seizure and by overnight mail, as soon thereafter as practical informing such person how and when the vehicle, tool or implement may be reclaimed. In the event that the person from whom the vehicle was seized is not the registered owner of the vehicle, separate notice shall be provided by overnight mail to the registered owner of the vehicle. Notice shall also be provided to any lienholder in the same manner. For purposes of this section, the term "lienholder" shall, in the case of a vehicle, mean any person, corporation, partnership, firm, agency, association or other entity who at the time of a seizure pursuant to this section has a financial interest recorded as a lien with the Department of Motor Vehicles of the State of New York or any other state, territory, district, province, nation or other jurisdiction.

3. The Sealer or the designee of the Sealer shall hold a hearing in accordance with the provisions of section 277.151 of the Laws of Westchester County not otherwise in conflict with this section, to adjudicate the violation of subdivision 1 of section 863.313 of this article underlying the seizure and impoundment within five business days after the date of such seizure and impoundment and shall render his or her determination immediately following the conclusion of such hearing. Such determination shall also include a finding as to whether or not such vehicle, tool or other implement was used in connection with such violation, and if necessary, an additional finding as to whether the owner of such property, if not the person served with a notice of violation pursuant to subdivision 1 of this section, permitted the use of such property under circumstances evincing that such owner knew or should have known that such property would be used for the conduct that was the basis for the seizure of the property. There shall be a rebuttable presumption that such owner knew or should have known that such property would be used for the conduct that was the basis for the seizure of the property, if such owner was the employer, parent, legal guardian or spouse of the person served with a notice of violation pursuant to subdivision 1 of this section at the time of the seizure.

4. A vehicle, tool or other implement seized and impounded pursuant to this section may be released to the owner of such property prior to the hearing provided in subdivision 3 of this section upon the posting of an all cash bond in a form satisfactory to the Sealer in an amount sufficient to cover: (a) the maximum civil penalties which may be imposed for the violation of subdivision 1 of section 863.313 of this article underlying the seizure and impoundment; (b) all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County against the person served with a notice of violation pursuant to subdivision 1 of this section – if the authorized agent seizing such property pursuant to subdivision 1 of this section alleges, based upon reasonable cause to believe, that such owner, if not the person served with a notice of violation pursuant to subdivision 1 of this section, permitted the use of such property under circumstances evincing that

such owner knew or should have known that such property would be used for the alleged conduct that was the basis for the seizure of the property; and (c) all reasonable costs for removal and storage of such vehicle, tool or implement. In addition, release of such vehicle, tool or other implement to the owner of such property shall also require payment of all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County directly against such owner. Release to a person claiming such property shall be conditioned on presentation of, in the case of (i) a vehicle, proof of ownership or authorization from the owner of the vehicle as ownership is defined by section 388 of the Vehicle and Traffic Law, or (ii) in the case of a tool or other implement or equipment, proof of ownership or authorization by the owner satisfactory to the Sealer.

5. Following an adjudication that has resulted in a determination that the vehicle, tool or other implement was used in connection with unlicensed activity in violation of subdivision 1 of section 863.313 of this article, release of such vehicle, tool or other implement to the owner of such property may be obtained upon payment of: (a) all civil penalties for the violation of subdivision 1 of section 863.313 of this article underlying the seizure and impoundment; (b) all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County directly against such owner; (c) all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County against the person served with a notice of violation pursuant to subdivision 1 of this section – if such owner was determined by the Sealer or the designee of the Sealer pursuant to subdivision 3 of this section, to have permitted the use of such property by the person served with a notice of violation pursuant to subdivision 1 of this section under circumstances evincing that such owner knew or should have known that such property would be used for the conduct that was the basis for the seizure of the property; and (d) all reasonable costs for removal and storage of such vehicle, tool or implement and proof of ownership as provided in subdivision 4 of this section.

6. No person shall obtain release of a vehicle, tool or other implement pursuant to subdivisions 4 and 5 of this section, unless and until such person submits an application for a home improvement license, or reinstatement of such a license, as appropriate, to the Sealer in the form and containing the information required by the Sealer. Notwithstanding the provisions of this section, in the event that the owner of the vehicle, tool or other implement was not the person who was served with a notice of violation alleging a violation of the provisions of subdivision 1 of section 863.313 of this article or found to be in violation of the provisions of subdivision 1 of section 863.313 of this article, such owner may obtain release upon payment of all applicable civil penalties and all reasonable costs of removal and storage as provided herein and upon execution of a sworn statement, subject to the provisions of the Penal Law relative to false statements and satisfactory to the Sealer, that he or she will not permit the person who is alleged to have violated or found to have violated such provisions to operate or possess the vehicle, tool or other implement in violation of subdivision 1 of section 863.313 of this article.

7. After adjudication of the violation underlying the seizure in accordance with subdivision 3 of this section, if the Sealer or the designee of the Sealer finds that the vehicle, tool or other implement has not been used in connection with unlicensed activity under the provisions of subdivision 1 of section 863.313 of this article, the Department of Consumer Protection – Weights and Measures shall promptly cause such vehicle, tool or other implement to be released to its lawful owner upon payment of all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County against such owner. If applicable, the Department of Consumer Protection – Weights and Measures shall also promptly return any cash bond posted pursuant to subdivision 4 of this section in accordance with the determination of the Sealer or the designee of the Sealer pursuant to subdivision 3 of this section. Upon demand of the applicant, the Department of Consumer Protection – Weights and Measures shall refund fees, as appropriate, paid in connection with the submission of an application for a home improvement license pursuant to subdivision 6 of this section, provided that said applicant withdraws the application, if pending, or otherwise surrenders any home improvement license previously issued pursuant to such application.

Section 4. This Local Law shall take effect thirty days after it shall have become law.

ARTICLE XIX. INSTALLATION AND REPAIR OF OVERHEAD GARAGE DOORS.

Section 863.601. Legislative findings.

The County Board of Legislators finds that overhead garage doors without safety cables attached to them create a danger to persons and property. Specifically, the springs which facilitate the opening and closing of

overhead garage doors have a tension weight from 75 lbs. to 300 lbs. of pressure. Upon loosening or breaking, these springs can shoot away from the garage door causing serious injury to persons and damage to property.

The County Board of Legislators further finds that the proper installation of an anchored safety cable can avoid serious injury or damage by preventing the release of the spring from an overhead garage door. Therefore, it is in the interest of the welfare and safety of the citizens of Westchester County to require that home improvement businesses install safety cables upon installation or repair of overhead garage doors.

Section 863.602. Definitions.

1. *Home improvement business* shall mean a home improvement business licensed pursuant to chapter 863, article XVI of the Laws of Westchester County.
2. *Overhead garage door* shall mean any sectional overhead garage door that employs the use of extensions springs.
3. *Person* shall mean any natural person, corporation, unincorporated association, firm, partnership, joint venture, joint stock association or other entity or business organization of any kind.
4. *Safety cable* shall mean a safety cable no less than three-thirty-seconds (3/32) of an inch which is anchored from the rear support brackets that hold the garage door track to the front part of the garage door frame.

Section 863.603. Installation and repair of overhead garage doors.

It shall be unlawful for any person or home improvement business to install or repair any overhead garage door without installing a safety cable, if one does not already exist.

Section 863.604. Violations.

A violation of section 863.603 shall be punishable by a civil fine not to exceed \$150.00.

Section 863.605. Severability.

If any clause, sentence, paragraph or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph section or part thereof directly involved in the controversy and in which such judgments shall have been rendered.

ARTICLE XXVI. RESTRICTIONS ON THE APPLICATION AND SALE OF LAWN FERTILIZER WITHIN THE COUNTY OF WESTCHESTER.

Section 863.1301. Definitions.

(1) "County" means the County of Westchester.

(2) "Commercial fertilizer" means "any substances containing one or more recognized plant nutrients which is used for its plant nutrient content, and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal or vegetable manures, agricultural liming material, wood ashes, gypsum and other products exempted by regulation of the New York State Commissioner of Agriculture and Markets. Any biosolid-based product which is not subject to regulation as a 'commercial fertilizer' by the New York State Department of Agriculture and Markets is not subject to the provisions of this article."

(3) "Lawn fertilizer" means "a commercial fertilizer distributed primarily for non-farm use, such as lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries, and such other use as the commissioner may define by regulation. Lawn fertilizer does not include fertilizer products intended primarily for garden and indoor plant application."

(4) "Surface water" means "lakes, bays, sounds, ponds, impounding reservoirs, perennial streams and springs, rivers, creeks, estuaries, marshes, inlets, canals, and all other perennial bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private, but shall not include artificial ponds."

Section 863.1302. Regulation of the Use and Application of Lawn Fertilizer.

(1) No person shall apply any lawn fertilizer within the County that is labeled as containing more than 0% phosphorus or other compound containing phosphorus, such as phosphate, except as provided in section 863.1303.

(2) No person shall apply lawn fertilizer between December 1st and April 1st.

(3) No person shall apply lawn fertilizer to any impervious surface including parking lots, roadways, and sidewalks. If such application occurs, the fertilizer must be immediately contained and either legally applied to turf or placed in an appropriate container.

(4) No person shall apply lawn fertilizer to any turf or lawn area on any real property within twenty (20) feet of any surface water, except that this restriction shall not apply where a continuous natural vegetative buffer, at least ten (10) feet wide, separates a turf or lawn area and surface water.

§ 863.1303. Exemptions.

The prohibition against the use of lawn fertilizer under section 863.1302(1) and (4) shall not apply to:

(1) Newly established turf or lawn areas during their first growing season.

(2) Turf or lawn areas that soil tests confirm the need for additional phosphorus application. The lawn fertilizer application shall not contain an amount of phosphorus exceeding the amount and rate of application recommended in the soil test evaluation.

(3) Agricultural uses, vegetable and flower gardens, or application to trees or shrubs.

Section 863.1304. Sale of Fertilizer Containing Phosphorus.

(1) No person located and/or doing business within the County of Westchester shall sell or offer for sale any lawn fertilizer within the County that is labeled as containing more than 0% phosphorus, or other compound containing phosphorus, such as phosphate, except such fertilizer may be sold for use as provided in section 863.1303.

(2) No person located and/or doing business within the County of Westchester shall display for sale lawn fertilizer containing phosphorus. Signs may be posted advising customers that lawn fertilizer containing phosphorus is available upon request for uses permitted by section 863.1303.

(3) Any person located and/or doing business within the County of Westchester, which sells or offers for sale lawn fertilizer, shall be required, at the location where lawn fertilizers are sold, to post a sign, in the form provided by the Department of Weights and Measures, containing the regulations set forth in this Article and explaining the effects of phosphorus and nitrogen on water quality and Westchester County waters.

Section 863.1305. Educational Requirements for Home Improvement Contractors.

Every person who offers to provide or provides lawn or turf services, including, but not limited to, persons applying for a license to engage in a home improvement business pursuant to Article XVI of this Chapter, or applying for renewal of a license to engage in a home improvement business pursuant to such article, and who offer to provide or provide lawn or turf services in the operation of such home improvement business, shall provide proof of completion of a turf management course approved by the Sealer in consultation with the Commissioner of the Department of Planning and Westchester County Cornell Cooperative Extension. The Sealer, in consultation with the Commissioner of the Department of Planning and Westchester County Cornell Cooperative Extension, may require the participation of such persons at additional informational seminars and/or courses at reasonable times but no more than once per year in order to ensure that all such persons are informed of developing issues, technologies, and laws which may impact the performance of

services by such persons in Westchester County. The Sealer, in consultation with the Commissioner of the Department of Planning, shall have authority to adopt rules and regulations as may be deemed necessary for the administration and enforcement of this paragraph.

Section 863.1306. Public Education Campaign; Program Monitoring.

(1) The County of Westchester shall undertake a multi-faceted public education campaign, including the creation of an interactive webpage, aimed at the reduction of non-point source pollution in Westchester County waterways. Such public education campaign will include the development of best management practices for lawn and garden care, as well as other strategies for the reduction of nutrient pollution caused by human activity, and shall specifically address the impacts of nitrogen and phosphorous on water quality in and around Westchester County.

(2) The County Executive shall cause an evaluation of the effectiveness of the restrictions on fertilizers under this article to be undertaken and shall further cause an evaluation report to be provided to the County Board by December 31, 2015.

Section 863.1307. Enforcement and Penalties.

For the first violation of the provisions of this Article or any rule or regulation adopted pursuant to this Article, a civil penalty not exceeding fifty dollars (\$50.00) shall be imposed. For the second and succeeding violations, a civil penalty not exceeding one hundred fifty dollars (\$150.00) shall be imposed for each single violation. No civil penalty shall be imposed as provided for herein unless the alleged violator has received notice of the charge against him or her and has had an opportunity to be heard.

Section 863.1308. Reverse preemption.

This chapter shall be null and void on the day that Federal or Statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Westchester. The County Board of Legislators may determine via mere resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

Section 863.1309. Separability.

If any section, subsection, sentence, clause, phrase or portion of this local law is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 2. This Local Law shall take effect immediately, provided that subdivisions (2), (3) and (4) of Section 863.1302, Section 863.1303 and Section 863.1307 shall take effect on the sixtieth (60th) day after enactment of this Local Law. Subdivision (3) of Section 863.1304 shall take effect on the one hundred twentieth (120th) day after the enactment of this Local Law. Section 863.1305 shall take effect on the one hundred eightieth (180th) day after the enactment of this Local Law. Subdivision (1) of Section 863.1302 and Subdivisions (1) and (2) of Section 863.1304 shall take effect on January 1, 2011.

ADMINISTRATIVE CODE

ARTICLE VIII: Consumer Policy Board and Consumer Protection

Section 227.171. Enforcement, violations and civil penalties.

1. The hearing officer may impose for each proven violation of the code or for failure to comply with any order made pursuant thereto a civil penalty not to exceed \$1,000.00. Each day that such violation or failure continues shall constitute a separate offence for which a penalty may be assessed. Any person found by the Sealer or the designee of the Sealer to be in violation of subdivision 1 of section 863.313 of the Consumer Code shall be liable for a civil penalty not to exceed \$1,000.00 for the first violation; not more than \$5,000.00 for the second violation within a five-year period; and not more than \$10,000.00 for the third and all subsequent violations

within a ten-year period. Nothing herein contained shall be construed to exempt an offender from any other prosecution or penalty imposed by law. The penalty imposed hereunder and the reasonable costs and expenses attendant to its collection shall be recoverable from the offender in the same civil action brought by the County Attorney in the name of the County of Westchester;

NEW YORK STATE GENERAL BUSINESS LAW

ARTICLE 36-A

HOME IMPROVEMENT CONTRACTS

Section 770. Definitions.

771. Contract provisions.

771-a. Responsibilities of home improvement contractors.

772. Penalty for fraud.

773. Violations.

774. Action by the attorney general.

775. Applicability.

776. Severability.

§ 770. Definitions. As used in this article, the following terms, unless the context requires otherwise, shall have the following meanings:

1. "Person" means a natural person.

2. "Owner" means any homeowner, co-operative shareholder owner, or residential tenant, or any person who purchases a custom home as defined in this section.

3. "Home improvement" means the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property and shall include, but not be limited to, the construction, erection, replacement, or improvement of driveways, swimming pools, siding, insulation, roofing, windows, terraces, patios, landscaping, fences, porches, garages, solar energy systems, flooring, basements, and other improvements of the residential property and all structures or land adjacent to it. "Home improvement" shall also mean the construction of a custom home, the installation of home improvement goods or the furnishing of home improvement services.

"Home improvement" shall not include:

(a) the sale or construction of a new home, other than a custom home as defined in this section;

(b) the sale of goods by a seller who neither arranges to perform nor performs, directly or indirectly, any work or labor in connection with the installation or application of the goods;

(c) the sale or installation of appliances, such as stoves, refrigerators, freezers, room air conditioners, dishwashers, clothes washers or dryers, which are designed to be removable from the premises without material alteration thereof;

(d) the sale or installation of decorative goods or services, such as draperies and carpets; or

(e) the performance of repairs, replacements, or other services pursuant to an express or implied warranty, or a maintenance agreement as defined in section three hundred ninety-five-a of this chapter.

4. "Home improvement goods or services" means goods and services which are bought in connection with home improvement. Such home improvement goods and services include burglar alarms, texture coating, fencing, air conditioning, heating equipment, and any other goods which, at the time of sale or subsequently, are to be so affixed to real property by the home improvement contractor as to become a part of real property whether or not severable therefrom.

5. "Home improvement contractor" means a person, firm or corporation which owns or operates a home improvement business or who undertakes, offers to undertake or agrees to perform any home improvement for a fee and for whom the total cash price of all of his home improvement contracts with all his customers exceeds one thousand five hundred dollars during any period of twelve consecutive months. Home improvement contractor does not include a person, firm, corporation, landlord, cooperative corporation, condominium board of managers, joint tenant or co-tenant that owns, in whole or in part, the property to be improved.

6. "Home improvement contract" means an agreement for the performance of home improvement, between a home improvement contractor and an owner, and where the aggregate contract price specified in one or more home improvement contracts, including all labor, services and materials to be furnished by the home improvement contractor, exceeds five hundred dollars.

7. "Custom home" means a new single family residence to be constructed on premises owned of record by the purchaser at the time of contract, provided that such residence is intended for residential occupancy by such purchaser and the contract of sale is entered into on or after the first day of March, nineteen hundred ninety.

§ 771. Contract provisions. 1. Every home improvement contract subject to the provisions of this article, and all amendments thereto, shall be evidenced by a writing and shall be signed by all the parties to the contract. The writing shall contain the following:

(a) The name, address, telephone number and license number, if applicable, of the contractor.

(b) The approximate dates, or estimated dates, when the work will begin and be substantially completed, including a statement of any contingencies that would materially change the approximate or estimated completion date. In addition to the estimated or approximate dates, the contract shall also specify whether or not the contractor and the owner have determined a definite completion date to be of the essence.

(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, and the agreed upon consideration for the work and materials.

(d) A notice to the owner purchasing the home improvement that the contractor or subcontractor who performs on the contract or the materialman 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. Such home improvement contract shall also contain the following notice to the owner in clear and conspicuous bold face type:

"Any contractor, subcontractor, or materialman who provides home improvement goods or services pursuant to your home improvement contract and who is not paid may have a valid legal claim against your property known as a mechanic's lien. Any mechanic's lien filed against your property may be discharged. Payment of the agreed-upon price under the home improvement contract prior to filing a mechanic's lien may invalidate such lien. The owner may contact an attorney to determine his rights to discharge a mechanic's lien".

(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 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.

(g) If the contract provides that the home improvement contractor will be paid on a specified hourly or time basis for work that has been performed or charges for materials that have been supplied prior to the time that payment is due, such payments for such work or materials shall not be deemed to be progress payments for the purposes of paragraph (f) of this subdivision, and shall not be required to be deposited in accordance with the provisions of paragraph (e) of this subdivision.

(h) A notice to the owner that, in addition to any right otherwise to revoke an offer, the owner may cancel the home improvement contract until midnight of the third business day after the day on which the owner has signed an agreement or offer to purchase relating to such contract. Cancellation occurs when written notice of cancellation is given to the home improvement contractor. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid. Notice of cancellation shall be sufficient if it indicates the intention of the owner not to be bound. Notwithstanding the foregoing, this paragraph shall not apply to a transaction in which the owner has initiated the contract and the home improvement is needed to meet a bona fide emergency of the owner, and the owner furnishes the home improvement contractor with a separate dated and signed personal statement in the owner's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the home improvement contract within three business days. For the purposes of this paragraph the term "owner" shall mean an owner or any representative of an owner.

2. 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.

§ 771-a. Responsibilities of home improvement contractors. No home improvement contractor shall engage in any activity, transaction, or course of business or pay or receive any fee, payment, money, or other thing of value in connection with the financing of a home improvement contract without disclosing such activity, transaction, or course of business and any fees, payment, or other thing of value paid or to be paid in

connection therewith, and without having obtained the agreement in writing from all parties to the transaction to such activity and the payment therefor.

§ 772. Penalty for fraud. 1. Any owner who is induced to contract for a home improvement, in reliance on false or fraudulent written representations or false written statements, may sue and recover from such contractor a penalty of five hundred dollars plus reasonable attorney's fees, in addition to any damages sustained by the owner by reason of such statements or representations. In addition, if the court finds that the suit by the owner was without arguable legal merit, it may award reasonable attorney's fees to the contractor.

2. Nothing in this article shall impair, limit, or reduce the statutory, common law or contractual duties or liability of any contractor.

§ 773. Violations. 1. Technical violations. Every home improvement contractor who violates any of the provisions of this article shall be subject to a civil penalty not to exceed one hundred dollars.

2. Substantial violations. Every home improvement contractor who fails to deposit funds in an escrow account or provide a bond or contract of indemnity or irrevocable letter of credit in compliance with the requirements of section seventy-one-a of the lien law, or who fails to provide a written contract substantially in compliance with the requirements of this article, shall be subject to a civil penalty not to exceed the greater of two hundred fifty dollars for each violation or five percent of the aggregate contract price specified in the home improvement contract; provided, however, that in no event shall the total penalty exceed twenty-five hundred dollars for each contract.

3. Mitigating factors; defenses. In an instance where the contractor has been shown to have committed multiple violations of this article or the provisions of section seventy-one-a of the lien law, the court shall consider the following factors in assessing a civil penalty pursuant to subdivision two of this section: the volume of business which the home improvement contractor performs on an annual basis, the number of contracts in violation, the actual financial loss or exposure to financial loss suffered by any owner as a result of the violations, and whether the home improvement contractor acted in good faith or willfully with respect to such violations. No home improvement contractor shall be subject to the increased penalties provided by subdivision two of this section if such contractor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such a violation.

§ 774. Action by the attorney general. 1. Upon any violation of the provisions of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or justice that the defendant has violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eight thousand three hundred three of the civil practice law and rules, and direct restitution.

In connection with an application made under this section, the attorney general is authorized to take proof and to make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

2. The provisions of this article may be enforced concurrently by the director of a municipal consumer affairs office, or by the town attorney, city corporation counsel, or other lawful designee of a municipality or local government, and all moneys collected thereunder shall be retained by such municipality or local government.

§ 775. Applicability. This article shall not exempt any contractor subject to its provisions from complying with any local law with respect to the regulation of home improvement contractors, provided, however, that after the effective date of this article, no political subdivision may enact a local law inconsistent with the provisions of section seven hundred seventy-one of this article.

§ 776. Severability. If any clause, sentence, paragraph, subdivision or part of this article or the application thereof to any person, firm or corporation, or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this article; or in its application to the person, firm or corporation, or circumstance, directly involved in the controversy in which such judgment shall have been rendered.

NEW YORK STATE LIEN LAW

§ 71-a. Further trust of funds received or receivable by owner under executory contract for the sale and improvement of real property

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4. (a) Under a home improvement contract, payments received from an owner by a home improvement contractor prior to the substantial completion of work under the contract shall be deposited within five business days thereafter by the recipient in an escrow account in a bank, trust company, savings bank, or state or federal savings and loan association, located in this state. No depository institution acting on the instructions or otherwise dealing with a home improvement contractor shall be obliged to inquire into the validity or propriety of any deposits to or withdrawals from any escrow account established by the home improvement contractor in compliance with this subdivision or to insure that any withdrawals from such account are applied for any specific purpose or purposes by the home improvement contractor. Such deposit or deposits shall remain the property of such owner except as otherwise provided herein. [fig 1] Unless the home improvement contract specifies the name of the depository where the funds will be placed, no later than ten business days after the deposit has been made, the recipient shall advise the owner in writing of the name of the depository where the funds have been placed. The recipient shall not be required to keep in separate depository accounts the funds of the separate owners from whom payments have been received, provided his books of account shall clearly show the allocation to each owner of the funds deposited in his general or special depository account or accounts.

(b) In lieu of making the deposit of such payment or payments in an escrow account as provided in paragraph (a) of this subdivision, the recipient may post with the owner a bond or contract of indemnity, issued by a surety company licensed to execute such an instrument in this state, or an irrevocable letter of credit issued by a bank, trust company, savings bank, or state or federal savings and loan institution located in this state, guaranteeing the return of the payments, or the proper application of the payments to the purposes of the contract, which otherwise would be required to be deposited in such escrow account, in which case the recipient shall not be required to deposit such payments in an escrow account. Said bond or contract of indemnity or irrevocable letter of credit shall be delivered to the owner within ten business days after receipt of the payment.

(c) At any time after making the deposit of such payment or payments in the escrow account, the recipient may post with the owner a bond or contract of indemnity issued by a surety company licensed to execute such an instrument in this state, or an irrevocable letter of credit issued by a bank, trust company, savings bank, or state or federal savings and loan institution located in this state, guaranteeing the return or proper application of such payment to the purposes of the contract, in which case the recipient shall not be required to maintain the deposit of such payment in such account.

(d) Such deposit or deposits shall remain the property of the owner or such bond or contract of indemnity or irrevocable letter of credit continued in effect until (i) the proper payment, transfer or application of such deposits by the contractor to the purposes of the home improvement contract under the schedule of payments provided therein; or (ii) the default or breach of the owner excusing the recipient's performance of the terms of the home improvement contract, but only to the extent of any reasonable liquidated damage amount as defined in section 2-718 of the uniform [fig 1] commercial code and set forth in the contract, and only after seven days prior written notice to the owner; or (iii) substantial performance of the contract.

(e) The recipient shall not withdraw deposits from the escrow account in excess at any time of the total amount shown in the schedule of payments in the home improvement contract. The amount of any such progress payments shall bear a reasonable relationship to the amount of work to be performed, materials purchased, or expenses for which the contractor would be obligated.

(f) If the home improvement contract provides that the home improvement contractor will be paid on a specified hourly or time basis for work that has been performed or charges for materials that have been supplied prior to the time that payment is due, this subdivision shall not apply to such payments for such work or materials.

(g) Failure to place customer deposits in escrow, except as provided herein, shall constitute a violation of this section.