

New York City Department of Consumer Affairs

Notice of Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer Affairs (“DCA” or “Department”) is proposing a new rule that would repeal all references to home improvement salespersons in the Department’s rules. Local Law 31 of 2020 repealed the licensing requirement for home improvement salespersons. This rule is necessary to implement Local Law 31.

When and where is the hearing? Pursuant to section 1043(e) of the New York City Charter, DCA has determined that that a public hearing would serve no public purpose at this time.

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

- **Website.** You can submit comments to DCA through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before September 28, 2020.

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

What authorizes DCA to make this rule? Local Law 31 of 2020, Sections 1043 and 2203(f) of the New York City Charter, and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer Affairs to make this proposed rule. This proposed rule was not included in the Department of Consumer Affairs’ regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find DCA’s rules? The Department’s rules are in Title 6 of the Rules of the City of New York.

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

Statement of Basis and Purpose of Proposed Rule

As part of its consumer protection mission, the Department of Consumer Affairs (“DCA”) licenses and regulates individuals and entities that perform work on private residences. Until now, DCA has issued separate licenses for home improvement contractors, who carry out such work, and home improvement salespersons, who sell jobs and negotiate contracts.

In February 2020, the City Council passed Local Law 31 of 2020, which, among other provisions, eliminated the home improvement salesperson license in the New York City Administrative Code. DCA is now proposing amendments to the Rules of the City of New York that would similarly eliminate all references to the home improvement salesperson license. Local Law 31 repealed the home improvement salesperson license because it was duplicative of, and redundant to, the home improvement contractor license. These proposed amendments will implement the law and eliminate unnecessary regulations in this industry.

The continued licensing of home improvement contractors will remain in place to regulate industry and protect consumers.

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.

Proposed Rule Amendments

Section 1. Subdivision (a) of section 1-02 of Chapter 1 of Title 6 of the Rules of the City of New York is amended to read as follows:

(a) The licenses and permits listed below expire on the dates indicated:

License	Date (years refer to calendar years)
Amusement Arcades	January 16 of Even Years
Auctioneer and Night Auction Sales	June 15 of Even Years
Billiard Room	August 1 of Odd Years
Booting of Motor Vehicles	December 31 of Odd Years
Debt Collection Agency	January 31 of Odd Years
Electronic or Home Appliance Service Dealers	June 30 of Even Years
Electronic Stores	December 31 of Even Years
Employment Agency	May 1 of Even Years
Garage, Parking Lot	March 31 of Odd Years
Home Improvement Contractor	February 28 of Odd Years
[Home Improvement Salesperson]	[February 28 of Odd Years]
Horse Drawn Cab	March 31 of Even Years
Horse Drawn Cab Driver	May 31 of Even Years
Laundry – Retail, Industrial, and Industrial Delivery	December 31 of Odd Years
Locksmith; Locksmith Apprentice	May 31 of Odd Years
Process Server	February 28 of Even Years
Products-for-the-Disabled Dealer	March 15 of Odd Years
Secondhand Dealer	July 31 of Odd Years
Sightseeing Bus	March 31 of Even Years
Sightseeing Guide	March 31 of Even Years
Stoop Line Stand	March 31 of Even Years

Storage Warehouse	April 1 of Odd Years
Towing Vehicles Company	April 30 of Even Years
Towing Vehicles Driver	October 31 of Even Years

§ 2. Section 2-221 of Subchapter V of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-221 Content and Cancellation of Contract.

- (a) Every agreement to perform a home improvement shall be evidenced by a written contract signed by all the parties to the contract and each home improvement contractor [or salesperson] shall furnish to the buyer a fully completed legible copy of the entire home improvement contract at the time of its execution and before any work is done. The home improvement contract shall be legible, in plain English and any other language, that was principally used in the oral sales presentation. The contract shall contain all of the following:
- (1) the date of the transaction, the contractor's name, office address, telephone number and license number[; and the salesperson's name and license number].
 - (2) 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.
 - (3) 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.
 - (4) a notice to the owner purchasing the home improvement that the contractor or subcontractor who performs on the contract 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.
 - (5) a notice to the owner purchasing the home improvement that the home improvement contractor is legally required to deposit all payments received prior to completion in accordance with subdivision four of § 71-a of the New York State Lien and that, in lieu of such deposit, the home improvement contractor may post a bond or contract of indemnity with the owner guaranteeing the return or proper application of such payments to the purposes of the contract.
 - (6) 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.
 - (7) any advertised representation including, but not limited to, any charge, guaranty, or warranty, shall be clearly stated and made a part of the home improvement contract.
 - (8) a clause wherein the contractor agrees to furnish the buyer with a certificate of Workers' Compensation Insurance prior to commencement of work pursuant to the contract.

- (9) a clause wherein the contractor agrees to procure all permits required by local law.
- (10) in immediate proximity to the space reserved in the contract for the signature of the buyer, in bold face type a minimum size of 10 points, a statement in the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

- (b) The contractor [or salesperson] shall furnish to the buyer at the time s/he signs the home improvement contract a separate completed form in duplicate captioned "NOTICE OF CANCELLATION" which shall be attached to the contract and easily detachable, and which shall contain in ten point bold face type, in English and in any other language used in the contract; the name and address of the contractor, the date of the transaction, the date until which buyer may give notice of cancellation, and the following statement:

NOTICE OF CANCELLATION

(enter date of transaction)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

[TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO [;Name of seller];, AT [;address of seller's place of business]; NOT LATER THAN MIDNIGHT OF _____.]

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (Name of seller), AT (address of seller's place of business) NOT LATER THAN MIDNIGHT OF _____.

_____.

(Date)

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's Signature)

- (c) 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.
- (d) The contractor [or salesperson] shall inform the buyer orally, at the time s/he signs the contract, of his or her right to cancel.
- (e) The contractor [or salesperson] shall not misrepresent in any manner the buyer's right to cancel.
- (f) Until the contractor [or salesperson] has complied with 6 RCNY §§ 2-221(a)(10) and 2-221(b) the buyer or any other person obligated for any part of the contract price may cancel the home improvement contract by notifying the contractor [or salesperson] at any time, in any manner and by any means of his or her intention to cancel. The period prescribed by 6 RCNY § 2-221(a)(10) shall begin to run from the time the contractor [or salesperson] complies with 6 RCNY §§ 2-221(a)(10) and 2-221(b).
- (g) The buyer's notice of cancellation to the contractor [or salesperson] need not take the form prescribed and shall be sufficient if it indicates the buyer's intention not to be bound.
- (h) The contractor [or salesperson] shall not fail or refuse to honor any valid notice of cancellation by the buyer and within ten business days after the receipt of such notice, the contractor [or salesperson] shall
 - (1) refund all payments made under the contract;
 - (2) cancel and return any negotiable instrument executed by the buyer in connection with the contract;
 - (3) take any action necessary or appropriate to terminate promptly any security interest created in the transaction; and
 - (4) within ten business days of receipt of the buyer's notice of cancellation the contractor [or salesperson] shall notify the buyer whether the contractor intends to repossess or to abandon any shipped or delivered materials.
- (i) The contractor [or salesperson] shall not negotiate, sell, transfer or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed.
- (j) A home improvement contract may not be cancelled if the buyer initiated the contract and requested commencement of work without delay because of an emergency, provided that the buyer furnishes the contractor with a separate dated and signed personal statement in the buyer's handwriting describing

the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the contract within three business days.

- (k) For purposes of this section a business day is any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day.
- [(l) A licensed salesperson shall exhibit a current license to any buyer or prospective buyer upon request, whether the request is made at the salesperson's place of business or elsewhere in the City of New York.
- (m) A salesperson shall notify the Department of Consumer Affairs, by written confirmation from his or her employer, within 48 hours of employment. Where the salesperson has more than one employer, each employer shall file written consent with the Department of Consumer Affairs, such consent to include the name or names of other employees of the salesperson.]

§ 3. Subdivision (a) of Section 2-226 of Subchapter V of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

- (a) Every person who applies for a license as a home improvement contractor [or as a salesperson (as defined in § 20-386(9) of the Administrative Code of the City of New York)] shall be required to pass an examination prior to being issued a home improvement contractor [or salesperson] license in accordance with § 20-387 of the Administrative Code of the City of New York. Such examination shall test the knowledge of the applicant with respect to home improvement business practices, procedures and regulatory requirements and shall be offered regularly by the Department. The fee for taking the examination is \$50. The \$50 fee includes one subsequent retake in case the applicant fails the first examination.

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

CERTIFICATION PURSUANT TO
CHARTER §1043(d)

RULE TITLE: Repeal of Requirements for Home Improvement Salespersons

REFERENCE NUMBER: 2020 RG 076

RULEMAKING AGENCY: Department of Consumer Affairs

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

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

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: 8/17/2020

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

CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Repeal of Requirements for Home Improvement Salespersons

REFERENCE NUMBER: DCA-116

RULEMAKING AGENCY: Department of Consumer and Worker Protection

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

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

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

August 17, 2020
Date