

## HOME IMPROVEMENT BUSINESS EXAMINATION GUIDE

The New York City Department of Consumer Affairs (DCA) licenses all individuals and businesses engaging in home improvement. To receive either a contractor's or salesperson's license, you must pass an examination given by DCA that tests your understanding of the law. This guide will help you prepare for the examination, but does not reflect all relevant laws and rules that you need to know. Licensees must comply with all relevant laws and rules, including the Consumer Protection Law. For a copy of the law regarding this license category, call 311, go to the DCA Licensing Center or visit [www.nyc.gov/consumers](http://www.nyc.gov/consumers) and click on the "Laws of the City of New York" link.

The test is based on the following information.

### The Basics of the City's Home Improvement Business Law

#### **What is "home improvement?"**

Home improvement means the construction, repair, replacement, remodeling, alteration, conversion, rehabilitation, renovation, modernization, improvement, or addition to any land or building, or that part of the land or building used or designed to be used as a residence or dwelling place, including driveways, swimming pools, terraces, patios, landscaping, fences, porches, garages, fallout shelters, basements. It includes installation of central heating/ air conditioning, central vacuum cleaning system, storm windows, awnings, or communication systems.

#### **What is not "home improvement?"**

Construction of a new home or building, the sale of goods or materials in connection with the installation of or application of goods or materials, work performed on a residence owned or controlled by the state or municipality, or the painting or decoration of a building, residence, home or apartment, when not related to home improvement work, are examples of what is not considered to constitute home improvement.

#### **Who is a "contractor?"**

A contractor is anyone who owns, operates, maintains, conducts, controls or transacts a home improvement business and undertakes or agrees to perform any home improvement, whether or not the contractor is a prime contractor or subcontractor with respect to the owner. A contractor may be an individual, a firm, a company, a partnership or a corporation.

#### **What is a "home improvement contract?"**

A "home improvement contract" is an agreement, whether or not in writing, between a contractor and a homeowner or tenant for performance of a home improvement and includes all labor, services and materials to be furnished and performed.

**Who is a “salesperson?”**

A salesperson is someone who negotiates a home improvement contract with a homeowner or tenant, or solicits a home improvement contract from an owner or tenant.

**Who is required to have a license?**

Any person who solicits, canvasses, sells, performs or obtains a home improvement contract as a contractor or salesperson is required to be licensed.

**Who does not require a license?**

An individual employee of a contractor does not require a license. A person performing a job which is less than \$200 does not require a license. Plumbers and electricians must have technical licenses from the Department of Buildings.

**Where must a license be posted?**

You must post your license in a conspicuous manner in your office.

**What must a licensee do in case of a change of address, change of ownership or change of management?**

Within 10 days of any such change, you must notify DCA.

**How does a person obtain a license or renewal of a license?**

By filing an application at DCA. A separate license is required for each place of business.

**What are a prime contractor’s duties and responsibilities?**

1. The prime contractor must secure all necessary permits, licenses, certificates of occupancy, or exemptions necessary to complete the contract in accordance with state/local building laws.
2. Each home improvement contractor must maintain copies of contracts, books of account, and other records reflecting all transactions related to the home improvement business for 6 years or the length of time of any contractual guarantee, whichever is longer.
3. All funds received by the home improvement contractor must be applied solely to the payment of expenses directly related to the home improvement. The contractor may not apply such funds to pay expenses unrelated to the home improvement, unless the home improvement is completed and all expenses for direct labor, material and subcontractors related thereto have been paid.
4. No work should be performed and no money should be disbursed until expiration of the 3-day cancellation period.

**A contractor cannot:**

1. Abandon or fail to perform any home improvement contract.
2. Make any substantial misrepresentation in the solicitation of a home improvement contract.
3. Commit fraud in the execution of a contract, mortgage, promissory note or other document related to the home improvement transaction.
4. Publish any advertisement which contains false, deceptive or misleading representations.
5. Violate the building, sanitary, fire and health laws.
6. Fail to notify DCA of ownership and management changes.
7. Conduct the home improvement business in any name other than the one licensed.
8. Act as an agent for, or advertise, promote or arrange a home loan or a home improvement loan for the homeowner.

**Must a contractor be willing to furnish a homeowner with a written estimate?**

Yes. A fee may be charged for the estimate, but that fee must be disclosed to the homeowner<sup>1</sup> prior to the furnishing of the estimate and must be itemized and reflected in the total estimated contract price.

**What kind of penalties can a contractor be liable for in connection with false or fraudulent representation?**

A contractor or salesperson who lies is subject to fines of up to \$500 for each separate misrepresentation. In addition, a contract entered into after misrepresentations are made may be declared null and void, and a contractor may be ordered to pay restitution to the homeowner.

**What are the penalties for operating a home improvement business without a license?**

Any person who owns or operates a home improvement business without a license or after a license is suspended/revoked is guilty of a misdemeanor and may be prosecuted criminally and subject to up to 6 months imprisonment and/or \$1,000 in fines. Each violation is a separate offense. In addition, such a person may be prosecuted civilly and faces fines of up to \$100 per day for engaging in unlicensed activity or aiding and abetting the operation of an unlicensed person or business. Finally, DCA can padlock (close down) and confiscate the tools and truck.

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<sup>1</sup> "Homeowner" means any home or apartment owner.

## Contracts & Cancellations

### **What form must a home improvement contract be in?**

Every home improvement contract must be in writing and signed by everyone involved. The homeowner must be given a completed, legible copy of the contract at the time of signing and before any work is done. The contract must be in plain English, unless another language was used in any oral sales presentation, in which case the contract needs to be in that language.

### **If a homeowner wants more work done beyond what's in the original contract, what should a contractor do?**

The contractor should provide a written amendment to the contract which needs to be signed by both the homeowner and the contractor.

### **What information must a home improvement contract contain?**

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 date when work will begin and be substantially completed, including a statement of anything that would alter the approximate completion date.
3. A description of the work to be done, materials to be provided and the cost for labor and materials.
4. A notice to the owner that if s/he does not pay the contractor or subcontractor, they may have a claim against the owner.
5. A notice to the owner that the contractor is legally required to deposit all payments received prior to completion or the contractor must post a bond or contract of indemnity with the owner guaranteeing the return or proper payment under the contract.
6. If the contract calls for incremental payments, a schedule of payments and the work/services to be performed.
7. Any advertised representation, including charges, guarantees or warranties, must be clearly stated.
8. The purchaser must be told in the contract that the contractor will furnish a Certificate of Workers' Compensation Insurance prior to beginning work.
9. The contract must inform the homeowner that the contractor will procure all permits required by local law.
10. Near the homeowner's signature and in **boldface** type of not less than 10 points, the following statement must be included:

**“You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of the transaction. See the attached Notice of Cancellation form for an explanation of this right.”**

**Must a contractor/salesperson provide the homeowner with a separate Notice of Cancellation?**

Yes. The contractor/salesperson must furnish to the homeowner at the time he/she signs the contract a separate completed form in duplicate captioned “**Notice of Cancellation**” which shall be attached to the contract and shall contain in at least 10 point **boldface** type, in English and any other language used in the contract, the following:

1. Name/address of contractor
2. Date of transaction
3. The date until which the homeowner may give notice of cancellation, and
4. The following statement must be included:

**Notice of Cancellation**  
(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within (3) business days from the date above.

If you cancel, any property traded in, any payments made by you under the contract 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 instruction 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 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], no later than midnight of [Date] \_\_\_\_\_.

I hereby cancel this transaction.

\_\_\_\_\_  
(Homeowner’s Signature and Date)

**Must a contractor/salesperson inform the homeowner orally of their right to cancel?**

Yes.

**What if a contractor/salesperson fails to comply with the provisions requiring oral and written notice of the homeowner's right to cancel?**

Until the contractor/salesperson complies with the requirements for oral and written notice of the homeowner's right to cancel, the homeowner may cancel the contract.

**What should a contractor do if a homeowner wants to cancel the contract?**

The contractor/salesperson should honor any valid notice of cancellation and must within 10 business days:

1. Refund all payments made under the contract;
2. Cancel and return monies paid in connection with the contract;
3. Terminate any security interest; and
4. Notify the homeowner as to whether the contractor intends to repossess or abandon any shipped/delivered materials.

**Does a salesperson need to notify DCA as to who his employer is, and vice versa?**

Yes. A salesperson shall notify DCA by written confirmation from his/her employer or employers within 48 hours of employment.

**Advertising & Selling Practices**

**The following rules are the basics to advertising home improvement work:**

1. All advertising and sales literature must contain the license number of the contractor.
2. Prices/descriptions of articles advertised must not be deceptive or misleading.
3. Headings must not contain exaggeration or deception.
4. A "savings" claim cannot imply the amount specified is the selling price.
5. Descriptions and illustration of advertised items or offers must accurately portray the product as to size, quality, quantity, and design.
6. Any description of materials shall be accurate.
7. When price or credit terms are used, they must accurately describe what is offered.
8. If installation is extra, the ad must clearly say so.
9. Statements such as "Factory to you" and "Buy from manufacturer" shall not be used unless the advertiser is actually the maker or producer of such items.
10. "Lifetime" guarantees or warranties shall not be made. Only guarantees/warranties, which extend to the normal life of the item/service, shall be used. In the case of defective materials and workmanship, the guaranty is not to be made beyond the period within which the defect is likely to show up.

## **General Industry & Business Knowledge**

### **Who must obtain permits?**

It is the duty and obligation of the prime contractor to secure all necessary permits, licenses, and certificate of occupancy or special exceptions in accordance with applicable state or local building laws. A contractor may not shift responsibility to the homeowner.

### **Where does a contractor go to secure a permit for an addition or alteration to a house?**

A contractor secures all necessary permits from the Department of Buildings. A contractor must make sure that any addition or alterations meet building code standards and do not violate local zoning laws. Finally, while a contractor may pick up permits at the Department of Buildings, alterations to building plans must be filed by a registered architect or licensed engineer.

### **What is the difference between a subcontractor and an employee?**

A subcontractor is an individual in business for himself or a firm in business for itself contracting to do part of a home improvement contract with a prime contractor. An employee works for wages and is under his/her employer's (the prime or subcontractor's) direct supervision and control.

### **What is net profit of a job?**

Net profit is the final profit of any job after expenses.

### **Must a subcontractor be licensed by the Department of Consumer Affairs?**

Yes. A subcontractor, as opposed to an employee of a general contractor, must be licensed by DCA to perform home improvement work in New York City. Electricians and Plumbers are licensed by the Department of Buildings.

### **What are some of your obligations with regard to employees?**

Employees must be covered by Workers' Compensation and disability insurance. Their wages must be reported to the I.R.S. and taxes must be withheld. In addition, the employer must comply with the federal immigration laws, which require employers to ensure that employees have legal authority to work in this country.

### **Can a contractor elect to secure a bond or participate in the Home Improvement Trust Fund?**

Generally, yes. A contractor can either secure a bond or contribute biannually to DCA's Home Improvement Trust Fund.

### **What is needed to paint the exterior of a house with more than one story?**

A suspended scaffold and a rigging permit from the Department of Buildings may be required to paint the exterior of a home which is one story or more, unless a ladder can be used to do the job.

### **Whose responsibility is it to obtain an amended Certificate of Occupancy?**

Where an amended Certificate of Occupancy is needed, it is the contractor's responsibility to obtain it for the homeowner. The actual amended Certificate of Occupancy must be filed by a registered architect or professional engineer at the Department of Buildings.

**Is it necessary for a home improvement contractor to hire a licensed electrician to do certain types of work?**

A licensed electrician is required for installation of anything having to do with light, heat and power, regardless of voltage.

**How must a contractor handle sales tax?**

Sales tax for repairs must be collected from the homeowner and paid by the contractor.

**What type of work qualifies as a capital improvement?**

Adding a bathroom to a home would be an example of a capital improvement. Repairs such as repairing a window frame or painting the living room do not qualify as capital improvement.

**When adding an extension to a home, what is the first thing a contractor should do before beginning work?**

The first thing a contractor should do before beginning work on a home is to consult with a licensed architect or engineer, not the Department of Buildings, to determine if the owner can put in the extension and still comply with the applicable zoning law.

**Where does a contractor go to secure a permit for a dumpster that is placed on the street?**

A contractor goes to the Department of Transportation for a dumpster permit.

For further information, contact:

NYC Department of Consumer Affairs  
Licensing Center, 5<sup>th</sup> Floor  
42 Broadway  
New York, NY 10004  
311  
[www.nyc.gov/consumers](http://www.nyc.gov/consumers)