

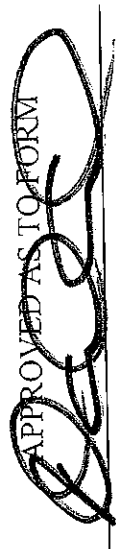
Submitted by the County Executive and Introduced By

LOCAL LAW NO. 16 - 2012

A LOCAL LAW TO AMEND THE NASSAU COUNTY ADMINISTRATIVE CODE
IN RELATION TO LICENSING PERSONS ENGAGED IN THE HOME SERVICES
BUSINESS

Passed by the Nassau County Legislature on November 19, 2012
Voting: ayes: 10 nays: 9 abstained: 0

Became a law on November 27, 2012 with the approval of the Deputy County Executive
acting on behalf of County Executive

APPROVED AS TO FORM

Deputy County Attorney

BE IT ENACTED by the County Legislature of the County of Nassau as follows:

Section 1. A new title is hereby added to chapter twenty-one of the Nassau County
Administrative Code as follows:

TITLE D-16
HOME SERVICES LICENSES

Section	§ 21-25.0	Legislative purpose
	§ 21-25.1	Definitions
	§ 21-25.2	License required; Home service business
	§ 21-25.3	Craft licenses
	§ 21-25.4	Home service business licenses; Requirements
	§ 21-25.5	Licenses; Display; Renewals; Duplicates
	§ 21-25.6	Fees
	§ 21-25.7	Powers of the Commissioner
	§ 21-25.8	Refusal, suspension and revocation of license; Fines
	§ 21-25.9	Prohibited acts
	§ 21-25.10	Exceptions
	§ 21-25.11	Completion date

§ 21-25.12	Issuance, refusal and renewal of licenses
§ 21-25.13	Hearings on charges; Decision
§ 21-25.14	Violations and penalties
21-29.15	Severability

§ 21-25.0. Legislative purpose

It is the purpose of the Legislature in enacting this Local Law to safeguard and protect homeowners against abuses on the part of home service contractors by regulating the home service contractor business and by licensing persons engaged in such business.

§ 21-25.1. Definitions

1. "Commissioner" means the commissioner of Consumer Affairs.
2. "Contractor" means any person who owns or operates a home service business or who undertakes or offers to undertake or agrees to perform any home services in Nassau County.
3. "Home service" shall include, but not be limited to, repair, carpet and floor cleaning, installation of decorative goods, upholstery including repair and cleaning, window treatment, gutter cleaning, window cleaning, general cleaning, mending windows and/or screens; installing home theatres, installing smoke and/or carbon monoxide detectors, home decorating, furniture repair, refinishing and/or restoration, roof and/or house washing, other than powerwashing and junk/debris/rubbish/estate cleanouts . "Home service" shall not include work performed by licensed home improvement contractors.
4. "Home service contract" means an agreement between a contractor and an owner for the performance of a home service, and includes all labor, services and materials to be furnished and performed there under.
5. "Home service establishment" means any shop, establishment, place or premises where the Home service business is carried on.
6. "Licensee" means a person permitted to engage in the home service business under the provisions of this title.
7. "Owner" means any homeowner, tenant, or any other person who orders, contracts for, or purchases the home service services of a Contractor, or the person entitled to the performance of the work of a contractor pursuant to a home service contract.
8. "Person" means an individual, firm, partnership, association, LLC or corporation.
9. "Management Personnel" means a person or persons who are principals in a contracting business or who are employed by a Contractor and are responsible for assisting in the business of the Contractor and vested with such discretion and judgment as to accomplish the business purpose of the Contractor.

§ 21-25.2. License required: Home service business

No person shall own, maintain, conduct, operate, engage in or transact a home service business after January first two thousand thirteen, or hold himself out as being able to do so after such date unless he is licensed therefore pursuant to this title.

§ 21-25.3. Craft licenses

1. A license issued pursuant to this title may not be construed to authorize the licensee to perform any particular type of work or kind of business which is reserved to qualified licensees under separate provisions of state or local law; nor shall any license or authority other than as is issued or permitted pursuant to this title authorize engaging in the home service business.

2. Nothing in this title 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 the contractors including a system of permits and inspections which are designed to secure compliance with and aid in the enforcement of applicable state and local building laws, or to enforce other laws which are necessary for the protection of the public health and safety. Nothing in this title limits 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 or of inspection of work done.

§ 21-25.4. Home service business licenses; Requirements

1. The maintenance of a bona fide establishment at a definite location within the state shall be a prerequisite for the issuance of a home service business license. The use of a telephone answering service shall not constitute a location for purposes of this section.

2. (a) An applicant for a home service Contractor's license must establish that he is the real owner and possess title to or is entitled to the possession of the establishment and will conduct, engage in and transact a home service business. He must furnish satisfactory evidence of a good moral character and financial responsibility.

(b) All applicants must furnish certificates of public liability and property damage insurance in the amount of one hundred thousand dollars (\$100,000) per person, three hundred thousand dollars (\$300,000) per occurrence, bodily injury and fifty thousand dollars (\$50,000) each occurrence and aggregate, property damage.

3. The Commissioner may require an application for a license or a renewal application 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, in an amount to be set by the commissioner, but in no event to exceed one hundred thousand dollars (\$100,000), conditioned upon the assurance that during the term of such license, the licensee will continue to comply with the provisions of this title to assure that upon default in the performance of any contract, the advance payments made thereon, less the reasonable value of services actually rendered to the date of such default, of the reasonable costs of completion of the contract in the event of non-completion thereof, will be refunded to the purchaser, owner or lessee with whom such contract was made. Such bond shall run to the County of Nassau for the use and benefit of any person or persons intended to be protected thereby. The filing of the required bond in the office of the clerk of the legislature, after approval as to form by the county attorney, shall be deemed sufficient compliance with this section. The Commissioner may require a bond at any time during the term of the license based on the licensee's performance during such term.

§ 21-25.5. Licenses; Display; Renewals; Duplicates

1. All licenses, shall be for a period of two (2) years from the date of issuance and shall expire on the last day of the twenty-fourth (24th) month following issuance.
2. No license shall be assignable or transferable except as hereinafter provided. A license to conduct a home service business issued to an individual may be assigned or transferred for the remainder of the license period to a partnership or corporation if such individual is a member of such partnership or a stockholder of such corporation owning not less than twenty-five (25) percent of the outstanding stock at the time of such assignment or transfer. A license issued to a partnership may be assigned or transferred for the remainder of the license period to any one member of such partnership provided he obtains the consent of all of the other members of such partnership. The application of such transfer or assignment must be accompanied by proof satisfactory to the Commissioner that the requirements herein provided have been complied with. No assignment or transfer shall become effective unless and until the endorsement of the transfer or assignment has been made on the face of the license by the Commissioner and such license, so endorsed, has been returned to the assignee or transferee. All such endorsements shall be made upon a payment fee of fifty dollars (\$50).
3. Each license issued pursuant to this title shall be posted and kept posted in some conspicuous place in the home service business.
4. Any license, which has not been suspended or revoked, may, upon the payment of the renewal fee prescribed by this title, be renewed for an additional period of two (2) years from its expiration, upon filing of an application for such renewal on a form to be prescribed by the Commissioner. Failure to make an application for such renewal within fifteen (15) days, shall subject the licensee to a penalty of seventy-five dollars (\$75) which shall be paid prior to the issuance of the renewal.
5. A duplicate license may be issued for one lost, destroyed or mutilated upon application therefore on a form prescribed by the Commissioner and the payment of the fee prescribed therefore by this title. Each such duplicate license shall have the word "duplicate" stamped across the face thereof and shall bear the same number as the one it replaces.
6. A supplementary license may be issued for each additional place of business maintained by a licensee within the County of Nassau upon application therefore on a form prescribed by the Commissioner and a payment of the fee prescribed therefore by this title. Each such supplementary license shall have the word "supplementary" stamped across the face therefore and shall bear the same name as the original.

§ 21-25.6. Fees

1. The fee for a license to conduct a home service business shall be a non-refundable application fee of five hundred dollars (\$500) and for each renewal thereof the fee shall be five hundred dollars (\$500).
2. The fee for issuing each supplementary license shall be one hundred dollars (\$100) or fifty dollars (\$50) for a duplicate license for one lost, destroyed or mutilated.
3. The fees hereinabove set forth shall be those for licenses issued for a period of two

(2) years.

§ 21-25.7. Powers of the Commissioner

In addition to the powers and duties prescribed in this title, the Commissioner shall have power:

1. To appoint such officers and employees, within the appropriation therefore, as he shall deem necessary for the performance of his duties.
2. To examine into the qualifications and fitness of applicants for licenses under this title.
3. To keep records of all licenses issued, suspended or revoked.
4. To adopt such rules and regulations not inconsistent with the provisions of this title as may be necessary with respect to the form and content of applications for licenses, the receipt thereof, the investigation and examination of applicants and their qualifications, and the other matters incidental or appropriate to his powers and duties as prescribed by this title and for the proper administration and enforcement of the provisions of this title, and to amend or repeal any of such rules and regulations.
5. The Commissioner or Commissioner's designee shall be authorized to suspend the license of any person pending payment of such fine, penalty or pending compliance with any order of the Commissioner or the Office of Consumer Affairs or with any other lawful order of the Office.
6. The Commissioner or the Office of Consumer Affairs may arrange for the redress of injuries or damage caused by any violation of this article and may otherwise provide for compliance with the provisions and purposes of this article.
7. The Commissioner shall be authorized to impose a fine or civil penalty or to suspend a license or both for failure to appear at a hearing at the Office after due notice of such hearing. If a license has been suspended, it shall be returned to the Office forthwith upon receipt of the order of suspension. Failure to surrender the license shall be grounds for a fine or civil penalty or revocation of the license.
8. Any of the remedies provided for in this section shall be in addition to any other remedies provided under any other provision of law.
9. The Commissioner, upon due notice and hearing, may require that persons licensed under this title who have committed repeated, multiple or persistent violations of this title or any other law, rule or regulation the enforcement of which is within the jurisdiction of the Office, conspicuously display at their place of business and in advertisements a notice (of a form, content and size to be specified by the Commissioner), which shall describe the person's record of such violations; provided that, for each time such display is required, the Commissioner may require that such notice be displayed for not less than ten not more than one hundred days.

§ 21-25.8. Refusal, suspension and revocation of license; Fines

A license to conduct, operate, engage in and transact a home service business as a home service contractor may be refused, suspended or revoked by the Commissioner or a fine not exceeding five thousand dollars (\$5,000), or both, may be imposed by the Commissioner or an authorized officer or employee of the Commissioner for any one or more of the following causes:

1. Fraud, misrepresentation or bribery in securing a license.
2. The making of any false statement as to a material matter in any application for a license.
3. The contractor is not financially responsible.
4. The person or the management personnel of the contractor are untrustworthy or not of good character.
5. The business transactions of the contractor have been marked by a failure to perform its contracts.
6. The willful manipulation of assets or accounts by the contractor.
7. Failure to display the license as provided in this title.
8. Failure to resolve a valid complaint registered in the Office of Consumer Affairs.
9. Violation of any provision of this title, or of any rule or regulation adopted hereunder.
10. A home service contractor who has had a license suspended and/or revoked in another jurisdiction shall report said suspension or revocation within ten (10) days of said action. Upon receipt of notification, the Commissioner, or his designee, may order a hearing to determine the continued validity of the contractor's ability to operate as a home service licensee in Nassau County.

Any failure on the part of the contractor to report another jurisdiction's actions, shall be deemed a willful failure to report and will result in the immediate suspension and/or revocation of the contractor's home service license in Nassau County.

§ 21-25.9. Prohibited acts

The following acts are prohibited:

1. Abandonment or willful failure to perform without justification, any home service contract or project engaged in or undertaken by the contractor.
2. Making any substantial misrepresentation in the procurement of a home service contract, or making any false promise likely to influence, persuade or induce.
3. Any fraud in the execution of or in the material alteration of any contract, mortgage, promissory note or other document incident to a home service transaction.

4. Preparing or accepting any mortgage, promissory note or other evidence of indebtedness upon the obligation of a home service transaction with knowledge that it represents a greater monetary obligation than the agreed consideration for the home service work.

5. Directly or indirectly publishing any advertisement relating to home services which contains an assertion, representation or statement of fact which is false, deceptive or misleading, provided that any advertisement which is subject to and complies with the then existing rules, regulations or guides of the Federal Trade Commission shall not be deemed false, deceptive or misleading; or by any means or advertising or purporting to offer the general public any home service work with the intent not to accept contracts for the particular work or at the price which is advertised or offered to the public.

6. Disregard and/or violation of the building, sanitary and health laws of this state or of any political or municipal subdivision thereof.

7. Failure to notify the Commissioner, in writing, of any change or control in ownership, management or business name or location.

8. Conducting a home service business in any name other than the one in which the contractor is licensed.

9. Failure to comply with any order, demand or requirement made by the Commissioner pursuant to provisions of this title.

10. As part of, or in connection with, the inducement to make a home service contract, no person shall promise or offer to pay credit charges or allow to a buyer any compensation or award for the procurement of a home service contract with others.

11. No contractor shall offer or pay a loan as an inducement to enter into a home service contract.

12. No acts, agreements or statements of a buyer under a home service contract shall constitute a waiver of any provisions of this title intended for the benefit or protection of the buyer.

13. Any transaction or agreement which fails to provide that the buyer can cancel same at any time prior to midnight on the third business day after the date of such agreement without penalty and every home service contract, excluding contracts signed in the seller's retail business establishment, shall contain a "Notice of Cancellation" in such form as provided by the Commissioner pursuant to such rules and regulations as he promulgates.

14. A willful deviation from or disregard of plans or specifications in any material respect without the consent of the owner.

16. No contractor shall permit the use of his license by another.

§ 21-25.10. Exceptions

No contractor's license shall be required of any person when acting in the particular capacity or particular type of transaction set forth in this section.

1. An individual who performs labor or services for a contractor as an employee thereof.

2. A person who is required by state or local law to attain standards of competency or experience as a prerequisite to engaging in his or her craft or profession and who is acting exclusively within the scope of the craft or profession for which he is currently licensed pursuant to such other law.

3. This title shall not apply to a home service contract otherwise within the purview of this local law which is made prior to the effective date of the respective provisions of this title governing such contracts.

§ 21-25.11. Completion date

Every home service contract shall provide for a completion date on which date all labor, services and materials be furnished and performed is to be completed and in no event shall such work be completed any later than thirty (30) days after said contract completion date.

§ 21-25.12. Issuance, refusal and renewal of licenses

1. When an application or renewal application has been filed with the Commissioner in proper form, the Commissioner shall, within a period of ninety (90) days from the date thereof, issue or refuse the appropriate Contractor's license to the applicant. If the application for a license is refused, the Commissioner shall send to the applicant a written statement setting forth the reasons for refusal to grant the license.

2. The Commissioner shall prescribe and furnish such forms as he may deem appropriate in connection with applications for licenses and issuance, renewal or termination thereof.

3. An applicant for any license required by the provisions of this title shall file with the Commissioner a written application which shall be signed and under oath. As a part of or in connection with such application, the applicant shall furnish information concerning his true identity, residence, personal history, home service business and any other pertinent facts which the Commissioner may require. The Commissioner may require names of owners, stockholders, partners, directors and officers of any applicant, and the business address and trade names of any applicant.

4. Every contractor licensee shall immediately after a change in control or ownership or of management or a change of address or trade name, notify the Commissioner in writing of such changes.

5. Licenses of all Contractors shall expire two (2) years from the date of issuance unless prior thereto the license is revoked or suspended by the Commissioner. Upon payment of the bi-annual license fee, as prescribed by section § 21-25.6 of this title, prior to the expiration date, a license may be renewed at the discretion of the Commissioner for another two (2) years, and the authority to do business shall continue in effect until such time within the two (2) years as the Commissioner revokes or suspends the license.

6. Temporary licenses may be issued in accordance with such rules or regulations as the Commissioner may prescribe to any applicant for a license who files an application in proper

form and pays the bi-annual license fee thereof. A temporary license shall automatically expire at the time the Commissioner either refuses to issue or grants the license.

7. The Commissioner may, at any time, require reasonable information of an applicant or licensee, and may require the production of books of accounts, financial statements or other records which relate to the home service activity, qualification or compliance with this title by the licensee.

§ 21-25.13. Hearings on charges; Decisions

1. No license shall be revoked until after a hearing had before an officer or employee of the Commissioner designated for such purpose by the Commissioner upon notice to the licensee of at least ten (10) days except as otherwise provided in this section. The notice shall be served by registered or certified mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee; and, if the licensee fails to attend such hearing, the Commissioner shall revoke the license of said licensee. The licensee shall be heard in his defense either in person or by counsel and may offer evidence on his behalf. The person conducting the hearing shall make a written report of his findings and a recommendation to the Commissioner for decision. The Commissioner shall review such findings and the recommendations and, after due deliberation, shall issue an order accepting, modifying or rejecting such recommendation. For the purpose of this title, the Commissioner or any officer or employee of the department designated by him may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents deemed pertinent to the subject of investigation.

2. A license may be suspended or fine imposed after a hearing had before an officer or employee of the Commissioner designated for such purpose by the Commissioner upon notice to the licensee of at least ten (10) days except as otherwise provided in this section. The notice shall be served by registered or certified mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee, and if the licensee fails to attend such hearing, the Commissioner shall revoke the license of said licensee. The licensee shall be heard in his defense either in person or by counsel and may offer evidence on his behalf. For the purpose of this title, the Commissioner or any officer or employee of the department designated by him may administer oaths, take testimony, subpoena witnesses and compel the production of book, papers, records and documents deemed pertinent to the subject of investigation.

3. Any fine authorized by Section § 21-25.8 may be waived or compromised by the Commissioner or his designated representative.

§ 21-25.14. Violations and penalties

1. Any person who shall own, conduct or operate a home service business without obtaining a license therefor or who shall violate any of the provisions of this title or any rules promulgated thereunder, or having had a valid license which has been suspended or revoked, shall continue to engage in such business, shall be guilty of a class A misdemeanor and subject to the punishment provided therefor. Each such violation shall be deemed a separate offense.

2. In addition to the penalties provided by paragraph 1 of this subdivision and those provided by sections 21-10.2 of this title, any person who violates any of the provisions of this title shall be liable for a penalty of not more than five thousand dollars (\$5,000) for each such

violation.

3. In addition to the penalties provided by paragraphs 1 and 2 of this section and those provided by sections 21-10.2 of this code, any person who uses a false or invalid license number, or falsely states or implies that he or she is licensed under this title, in any advertisements or in dealings with consumers, whether oral or written, shall be subject to a penalty for a deceptive trade practice, in accordance with the provisions of section 21-10.2 of this code.

4. The county attorney may bring an action in the name of the county to restrain or prevent any violation of this subdivision or any continuance of any such violation.

5. Where any violation of this subdivision is found to be willful or where such violation has posed a threat to the health or safety of the persons residing at the property at which the contractor has performed the work, the Commissioner may order the contractor to pay to the owner of such property, an amount which shall not exceed three times the actual amount of damages sustained by the owner or other person as a result of such violations.

21-29.15. Severability

If any clause, sentence, paragraph or part of this Title 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 2. The numbering of this title and the sections thereunder may be altered to ensure numerical consistency with the rest of the Administrative Code without the necessity for a vote to be taken by the County Legislature or by the members of any Standing Committee of said Legislature if this local law is passed by the affirmative vote of a majority of said Legislature.

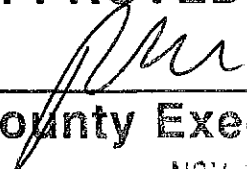
Section 3. Severability. If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 4. It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L. section 0101 et seq. and its implementing regulations, Part

617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County, that the adoption of this ordinance is a "Type II" Action within the meaning of Section 617.5(c)(20) and (27) of 6 N.Y.C.R.R., and, accordingly, is of a class of actions which do not have a significant effect on the environment; and no further review is required.

Section 5. This local law shall take effect January 1, 2013.

APPROVED



County Executive

DATE _____

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