

201 CMR: OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

201 CMR 18.00: REGISTRATION AND ENFORCEMENT OF HOME IMPROVEMENT CONTRACTOR PROGRAM

Section

- 18.01: General Provisions
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FORWARD

201 CMR 18.00 covers the registration of home improvement contractors and subcontractors and enforcement of the requirements of M.G.L. c. 142A as they pertain to home improvement contractors and subcontractors.

18.01: General Provisions

(1) Title. 201 CMR 18.00 is authorized and promulgated by the director of the Office of Consumer Affairs and Business Regulation under the authority of M.G.L. c. 142A.

(2) Definitions.

Advertisement. Any commercial message in any newspaper, magazine, leaflet, flyer, catalog, display space in the telephone book, on radio, television, or other electronic media, including but not limited to, web pages from websites, web ads, mobile applications, listing sites, and public address system, or made in person, by letter or other printed material, or any interior or exterior sign or display, including on a vehicle, which is delivered or made available to an owner by a registrant or a contractor required to be registered in any manner whatsoever. (*See* 201 CMR 18.01(2): Owner.)

Applicant. Any person who files an application to become or continue to operate as a registered home improvement contractor or subcontractor.

Application. The form provided by the director which, along with other documentation and fee(s) that may be required, must be duly filed to become or continue to operate as a registered home improvement contractor or subcontractor.

Certificate of Registration. The card or other document provided to a registrant that lists the registrant's registration number and other identifying information required by the director. (*See* 201 CMR 18.01(2): Registrant.)

Clear and Conspicuous. The material representation being disclosed is of ten-point type and is so presented as to be readily noticed and understood by a reasonable person. Language in the body of a contract is "conspicuous" if it is in larger or contrasting type or color, or underscored.

Contract. A written agreement between a home improvement contractor and an owner contained in one or more documents for the performance of certain residential contracting work, including all labor, material, goods and services set forth under said agreement for a total amount exceeding \$1,000.00.

Contractor. Any person who, through himself or others, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid for residential contracting work. (*See* 201 CMR 18.01(2): Home Improvement Contractor.)

Director. The Director of the Office of Consumer Affairs and Business Regulation.

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Employee. For the purposes of 201 CMR 18.00 determining the number of employees of an applicant for registration, any individual engaged in construction related activities who, in the weekly pay period prior to the date of registration worked 20 or more hours for the registrant and for whom the registrant withheld or was required to withhold federal or state income taxes and who, during the same pay period, was not otherwise paid or had such taxes withheld by any other registrant. Included would be all construction workers, supervisors, sales personnel, designers, estimators, active partners and officers of corporations.

Fund. The Residential Contractor's Guaranty Fund. (See 201 CMR 18.01(2): Guaranty Fund.)

Fund Administrator. The administrator of the Residential Contractor's Guaranty Fund, appointed by the director.

Guaranty Fund. The Residential Contractor's Guaranty Fund established pursuant to M.G.L. c. 142A.

Home Improvement Contractor. Any person who owns or operates a contracting business who, through himself or herself or others, undertakes, purports to have the capacity to undertake, offers to undertake, or submits a bid for residential contracting work to an owner, as such work is defined in 201 CMR 18.00 and M.G.L. c. 142A, and such work for each project is in a total amount in excess of \$1,000, and is registered or required to be registered in accordance with M.G.L. c. 142A and 201 CMR 18.00.

Homeowner. See 201 CMR 18.01(2): Owner.

Local Consumer Group. A local or regional agency which deals with the resolution of consumer problems and is determined eligible by the attorney general under standards set by the attorney general in accordance with M.G.L. c. 12, § 11G.

Mortgage Broker. Any person, who, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly negotiates, places, assists in placement, finds or offers to negotiate, place, assist in placement of mortgage loans on residential property for others, or as otherwise defined in M.G.L. c. 255E.

Mortgage Lender. Any person engaged in the business of making mortgage loans, or issuing commitments to fund mortgage loans, or accepting applications or fees associated with the making of mortgage loans which are secured by a mortgage on residential property, or as otherwise defined in M.G.L. c. 255E.

Mortgage Loan. A loan to any person made primarily for personal, family, or household purposes, secured wholly or partially by a mortgage on a residential property, or as otherwise defined by M.G.L. c. 255E.

OCABR. The Office of Consumer Affairs and Business Regulation.

Owner. Any homeowner of a building which is an existing building at the time of a contract that is owner-occupied, containing at least one but not more than four dwelling units, or a tenant authorized by the homeowner thereof, who orders, contracts for, or purchases the services of a contractor or subcontractor. An owner occupying a condominium unit in a building containing no more than four dwelling units qualifies as an owner under 201 CMR 18.01(2): Owner, provided the owner owns a total of not more than four condominium units. A condominium association does not qualify as an owner.

Owner-occupied. The residential building of at least one but not more than four dwelling units and occupied by the owner as a primary residence.

Permit. For the purposes of 201 CMR 18.00, any construction-related permit, excluding any permits required by the owner which are not considered construction-related, such as zoning, environmental, historical commission, and the like.

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Person. Any individual, partnership, corporation, society, trust, association, or any other legal entity.

Registrant. Any duly registered home improvement contractor or subcontractor.

Registration Number. The number assigned to the applicant after approval for registration by OCABR.

Residential Contracting. The reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal or demolition or the construction of an addition to any pre-existing owner-occupied building containing at least one but not more than four dwelling units, which building or portion thereof is used or designed to be used as a residence or dwelling unit, or to structures which are adjacent to such residence or building, including, but not necessarily limited to: garages, sheds, cabanas, pool houses, gazebos.

Salesperson. Any person, other than a supplier of materials or a laborer, who solicits, offers, negotiates, executes, or otherwise endeavors to procure by any means whatsoever, directly or indirectly, a contract for residential contracting services from an owner on behalf of a home improvement contractor or subcontractor.

Subcontract. A contract, written or verbal, in any amount, between a home improvement contractor and a subcontractor or between two subcontractors for the performance of any part of the home improvement contractor's or subcontractor's contract.

Subcontractor. Any person, other than a supplier of only materials, who enters into a contract, written or verbal, with a home improvement contractor for the performance of any part of a home improvement contractor's contract with an owner for residential contracting, or who enters into a contract with any other subcontractor for the performance of any part of the subcontractor's contract.

Supplementary Identification Card. The document issued upon the written request of the registrant to a third party, by which the registrant acknowledges that the third party holder is acting as an agent of the registrant.

(3) Scope.

(a) M.G.L. c. 142A and 201 CMR 18.00 require the registration of persons who engage in residential contracting work as defined in 201 CMR 18.00 and M.G.L. c. 142A and define the requirements of M.G.L. c. 142A and enforcement of 201 CMR 18.00 and M.G.L. c. 142A, as they pertain to home improvement contractors and subcontractors.

(b) Except for those persons who are specifically exempt from the provisions of 201 CMR 18.00 and M.G.L. c. 142A, all contractors and subcontractors who engage in residential contracting as defined in 201 CMR 18.00 and M.G.L. c. 142A shall be subject to and shall comply with 201 CMR 18.00 and M.G.L. c. 142A.

(4) Administration and Enforcement: Director Responsibility. The director shall promulgate and enforce the provisions of 201 CMR 18.00 and M.G.L. c. 142A as to all home improvement contractors and subcontractors who are registered or required to register.

(5) Persons Who must Register.

(a) General. All home improvement contractors and subcontractors, as defined in 201 CMR 18.00, except those exempt in 201 CMR 18.01(6), shall register with the director by filing an application prescribed by the director.

(b) Designated Individual. In the case of registration by a corporation or partnership, an individual shall be designated to be responsible for the corporation's or partnership's residential contracting work.

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(c) Liability. The corporation or partnership and its designee shall be jointly and severally liable for the payment of the registration fee, the payment to the Guaranty Fund, and for violations of any provisions of 201 CMR 18.00, including actions by the registrant's employees, subcontractors or salespersons.

(6) Persons Exempt from Registration or Renewal. Any person exempt from registration and who does not voluntarily register, is not subject to any of the provisions of 201 CMR 18.00 or M.G.L. c. 142A. Persons exempt from registration are:

- (a) the Commonwealth or its political subdivisions;
- (b) any school, public or private, offering as part of a vocational education program courses and training in any aspects of home construction or home improvements;
- (c) electricians, plumbers, architects or any other persons who are required by law to attain standards of competency or experience as a prerequisite to licensure for and engaging in such trade or profession and who are acting exclusively within the scope of the profession for which they are currently licensed pursuant to such law, construction supervisors excepted.
- (d) persons dealing in the sale of goods or materials who neither arrange to perform nor perform directly or indirectly any work or labor in connection with the installation of or application of the goods or materials;
- (e) any owner personally doing residential contracting work on his or her own home;
- (f) any individual who performs construction related labor or services for a home improvement contractor or subcontractor, for wages or salary and who does not act in the capacity of a home improvement contractor or subcontractor;
- (g) any contractor or subcontractor who works on one residential contracting undertaking or project by one or more contracts where the aggregate contract price to the owner is less than \$500; provided, however, that the contract is not in an amount of less than \$500 for the purpose of evading 201 CMR 18.00 or M.G.L. c. 142A;
- (h) any person who engages in the business of a home improvement contractor or subcontractor on other than a full-time basis, and who has earned in gross revenues from residential contracting work, less than \$5,000 in the 12-month period prior to the date of the contract;
- (i) any person acting as a home improvement contractor or subcontractor who was enrolled as a full-time student in a secondary school or college with degree granting authority from the government of the state in which the school is located, for the immediately preceding academic semester and is also enrolled as a full-time student for the next academic semester, in the same or a similar degree granting secondary school or college provided that at least $\frac{2}{3}$ of the number of employees of the contractor or subcontractor are similarly enrolled in secondary schools or colleges and that the home improvement contractor or subcontractor does not reasonably expect to earn or does not in fact earn, in gross revenues, more than \$5,000 from residential contracting work; provided, further, that such gross revenues shall be calculated using the 12-month period prior to the date of the contract;
- (j) persons who install any or all of the following:
 1. central heating;
 2. air-conditioning systems;
 3. energy-conservation devices; or
 4. provides conservation services conducted by or on behalf of a public utility under a program approved by the department of public utilities;
- (k) any contractor or subcontractor who works exclusively in any of the following home improvement areas:
 1. landscaping;
 2. interior painting or wall covering;
 3. finished floor covering, including, but not limited to, carpeting, vinyl, tile, non-structural hardwood;
 4. fencing or freestanding masonry walls;
 5. above-ground swimming pools;
 6. shutter or awning installation;
 7. ground level patios; includes flagstone, concrete, block, and wood set directly onto the ground; excludes decks which are supported above ground; or
 8. asphalt and driveway installation and maintenance.

18.02: Registration Procedure

(1) Applicant Actions.

(a) Application. Each applicant for registration as a home improvement contractor or subcontractor shall submit a completed copy of an application form supplied by the director and necessary supporting documents to the director, along with such fees as required by the provisions of 201 CMR 18.02(9), and M.G.L. c. 142A.

(b) Supporting Documentation. Supporting documentation shall include, as applicable:

1. For Corporations. An official document which lists the names and addresses of officers, directors, and major stockholders such as: a copy of the articles of incorporation, a current annual report as filed with the Secretary of the Commonwealth, a copy of the registration as a foreign corporation filed with the Secretary of the Commonwealth, or any other documentation which lists the names and addresses of officers, directors, and major stockholders, will be accepted in *lieu* of listing these names on the application.

2. For Partnerships. Either a copy of the current partnership agreement containing the requested information, or listing of the names and addresses of all partners on the application form.

3. For all Applicants Using a Doing Business as (DBA) Certificate. A copy of the DBA-certificate filed with a city or town pursuant to M.G.L. c. 110, § 5.

(c) Mailing Address. The application, supporting documentation and fees may be mailed or delivered as follows:

Office of Consumer Affairs and Business Regulation
HIC Registration Program
10 Park Plaza, Suite 5170
Boston, MA 02116

It shall be the responsibility of the applicant to ensure that the required registration material is received by the director.

(d) Forms of Payment. All applications shall be accompanied by the registration fee, and by the fee for the Guaranty Fund. Fees shall be in the form of a money order or certified check, or by any other form of payment at the discretion of the director. If payment is made by money order or certified check, two money orders or certified checks shall be included - one for the registration fee, if required, and one for the Guaranty Fund. Checks or money orders shall be made payable to: "Commonwealth of Massachusetts".

(e) Lost or Destroyed Certificate of Registration. Upon receipt of a nominal fee as established by the Commonwealth and posted on the agency's website (<http://www.mass.gov/ocabr/>), and a completed affidavit provided to the director, that a certificate of registration has been lost or destroyed, a replacement certificate clearly identified as such, shall be issued by the director.

(f) Licensee Liabilities. The provisions of 201 CMR 18.00 and those of M.G.L. c. 142A shall not be construed to relieve or lessen the responsibility of any person registered under 201 CMR 18.00 and M.G.L. c. 142A, nor shall the Commonwealth be deemed to have assumed any such liability by reason of the issuance of a registration.

(2) Director's Action on Application.

(a) Issuance of Certificate. Upon receipt of a completed application form, all supporting documentation required hereunder, and the proper fee(s) therefor, the director shall:

1. ascertain whether such applicant meets all of the registration requirements and there are no grounds for rejection as specified in 201 CMR 18.02(5);

2. assign the applicant a registration number within 30 days of receipt of the application if all requirements are met;

3. prepare and send by first class mail to such applicant, at the address stated on the registration form, a certificate indicating the registrant's registration number, name, address, any fictitious name under which the registrant will do business, and such other information as is deemed necessary by the director.

(b) The registration certificate is not transferable to any other person or entity.

(3) Certificates of Registrants.

(a) For applicants registering as individuals, the certificate of registration and identification card will be issued in the name of the registrant. Only one identification card will be issued to individual registrants.

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(b) Non-individual Registrants. If the applicant is a corporation, partnership, proprietorship with a fictitious name, or other non-individual entity, the certificate of registration and the initial identification card will bear the name of the registrant entity and the individual responsible for the home improvement residential contracting activities of the registrant.

(4) Supplementary Identification Cards.

(a) Supplementary Identification Cards may be issued, upon request of the registrant, to named officers, partners, or key individuals in the employ of the registrant under the certificate of registration number of the applicant entity, upon submission of the appropriate request form and fee. The applicant is responsible for the prompt return to OCABR of individual identification cards if there is a change in status of individuals holding such supplementary cards.

(b) Fees. For each supplementary identification card request in accordance with 201 CMR 18.02(4)(a), an additional fee per card in an amount of \$10.00 must accompany the request for additional cards.

(c) Expiration. Supplementary identification cards will expire on the expiration date of the registration certificate of the registrant that requested its issuance. Supplementary identification cards must be renewed along with the renewal of the registrant's certificate of registration, by submission of the required renewal application, renewal fee and an additional fee of \$10.00 per card requested.

(5) Grounds for Refusal to Register or Renew. No application for registration or renewal conforming to 201 CMR 18.00 and M.G.L. c. 142A may be denied except for a finding by the director that the applicant has committed one or more of the following acts:

(a) made material omissions or misrepresentations of fact on the home improvement contractor or subcontractor application for registration or application for renewal, or on supporting documentation;

(b) failed to pay either the registration fee or the payment to the fund as required under 201 CMR 18.02(9);

(c) failed consistently to perform contracts or has performed said contracts in an unworkmanlike manner or has failed to complete said contracts with no good cause or has engaged in fraud or bad faith with respect to said contracts;

(d) failed to meet or has violated any of the requirements for registered home improvement contractors or subcontractors as defined in 201 CMR 18.00, or has performed or is attempting to perform any act prohibited by 201 CMR 18.00 or M.G.L. c. 142A;

(e) is under suspension or revocation of registration as a home improvement contractor or subcontractor;

(f) has failed to repay the Guaranty Fund for any payments made by the Guaranty Fund on the registrant's account; or

(g) has failed to pay any administrative fines or penalties assessed.

(6) Application Refused. If the application is refused, the director shall, within 30 days of OCABR's receipt of the application, notify the applicant in writing by first class mail of the reasons for the rejection.

(a) If applicable, the applicant may correct the deficiencies in the application material and return the corrected data to the director within ten days of the date of mailing of the director's notice of refusal, who will then assign a registration number and issue a certificate.

(b) If the grounds for rejection are any of those set forth in 201 CMR 18.02, or M.G.L. c. 142A, the applicant may request that the director reconsider the application as submitted. Such a request must be in writing, and must state the reasons why the applicant believes the application should be granted; and such request must be received by OCABR within ten days of the date of mailing of the notice of the director's rejection of the application.

(7) Record Retention. The director shall keep a record of the date the application and all pertinent documents are received by OCABR. In addition, the director shall keep on file, in convenient form and open to public inspection, all applications for registration, copies of certificates issued, and the names of all home improvement contractors or subcontractors whose registration has been revoked, suspended or surrendered.

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(8) Duration of Registration.

(a) Initial Registration. Each such registration shall be in effect for two years from the date of issuance, unless suspended or revoked prior to that time, as provided in 201 CMR 18.00 and M.G.L. c. 142A.

(b) Renewal of Registration. Not less than 30 days before the date of the expiration of such registration, the director shall send or cause to be sent, to each registered contractor or subcontractor, at the address on record with OCABR, a notice for renewal of the registration and a copy of all forms necessary for such renewal, by first class mail, along with a schedule of such fees as are necessary for said renewal. Renewals will remain in effect for two years from date of renewal if not suspended or revoked prior to that time. The responsibility for timely renewal of registration remains with the registrant, notwithstanding this notice. An applicant shall submit a renewal application with fees within 30 days of the expiration date of the registration. Failure to submit a renewal application within this time period shall subject the applicant to the submission of an application for a new registration and payment of fees equal to the amount of the initial registration.

(9) Fees to Be Paid upon Registration or Renewal.

(a) Registration and Renewal Fee. All home improvement contractors and subcontractors shall, at the time of registration or renewal, pay to the Commonwealth, a fee in the amount of the fee then being charged for the construction supervisor's license under M.G.L. c. 143, § 94(i).

(b) Contribution to Guaranty Fund. At the time of initial registration, every contractor and subcontractor shall also pay to the Commonwealth, by separate certified check or money order or other form of payment at the discretion of the director, a fee payable to the Guaranty Fund. (See 201 CMR 18.02(1)(d).)

(c) The fee paid by contractors and subcontractors to the Guaranty Fund shall be determined based on the number of employees of the home improvement contractor or subcontractor, as defined in 201 CMR 18.01(2), on the date of initial registration, as follows:

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|--|----------|
| 1. Zero to three employees: | \$100.00 |
| 2. Four employees up to and including ten: | \$200.00 |
| 3. 11 employees up to and including 30: | \$300.00 |
| 4. More than 30 employees: | \$500.00 |

(d) Any registrant who fails to accurately determine the number of employees and pay the correct fee therefor shall be deemed to have failed to pay the fees required for registration and shall be subject to enforcement action by the director, in accordance with 201 CMR 18.02(5) and (9)(a) and (c).

(e) Responsibilities of Each Registrant.

1. Changes in Status. Each registrant shall be responsible for reporting, in writing, within 30 days, changes in trade name or address or additions of business name(s), and any other pertinent changes in circumstances to the director.

2. Display of Certificate Number. Every contract, building permit and advertisement for residential contracting as defined in 201 CMR 18.00 shall display the home improvement contractor's or subcontractor's certificate of registration number.

3. Return of Certificate. Upon the expiration, suspension or revocation, termination or voluntary surrender of a registration, the registrant shall deliver the certificate to the director who shall cancel the registration and endorse the date of expiration, suspension or revocation, termination or surrender. In such case, no further residential contracting work shall be engaged in by the contractor or subcontractor.

18.03: Enforcement Procedures

(1) Notification of Violation. The Fund Administrator shall notify the director if a registrant fails to repay the fund for any payment made from the fund to an owner because of the conduct of said registrant. In addition, the director, attorney general, district attorney, or local consumer groups as defined in 201 CMR 18.01(2), shall advise the director of orders resulting from arbitration or court action, or other complaint activity against individual registrants or contractors required to be registered, accompanied by a recommendation for enforcement action against a registrant or contractor required to be registered. Complaint activity shall include, but not necessarily be limited to:

- (a) acts prohibited under 201 CMR 18.04(5)(c) or M.G.L. c. 142A;

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(b) a complaint or complaints of violations causing substantial harm to an owner or owners. Nothing in 201 CMR 18.03(1) shall preclude the director from initiating enforcement action on his or her own initiative.

(2) Consideration of Factors. The director, upon receipt of a notification under 201 CMR 18.03(1) shall consider the pertinent factors in the particular situation, and decide what enforcement action in accordance with 201 CMR 18.04, if any, shall be taken against the registrant or contractor required to be registered considering, among any other pertinent factors, the recommendations of the director, attorney general, district attorney, the local building inspector or the local consumer group(s), the severity of the violation(s), the frequency of repetitive violations, the harm to the complainant or the general public, and the impact upon the registrant or contractor required to be registered.

(3) Letter of Reprimand. The director, on his or her own initiative, may send a letter of reprimand to the registrant containing the facts of the situation, which may include that the incident has been noted on the registrant's official records, and the possibility of more severe disciplinary action in the event of repetitive violations.

(4) Suspension, Revocation, Administrative Penalty. The director may suspend or revoke a registrant's certificate of registration, or assess an administrative penalty against a registrant or contractor required to be registered, subject to the hearing provisions in 201 CMR 18.03(5).

(5) Hearing Procedure.

(a) Notice of Hearing. The director shall give at least 14 days notice of a scheduled hearing to the registrant or contractor required to be registered, and to all parties to the hearing, *i.e.*, the director, the attorney general, the district attorney, or the local consumer group from whom the recommendation for enforcement action was received. Notice to the registrant or contractor required to be registered will be deemed sufficient if it is mailed to the most recent address of record in the director's file.

(b) The notice of hearing shall contain, at a minimum:

1. The nature of the violation;
2. A statement of the enforcement action recommendation;
3. The date, time and place for the hearing;
4. Notice that the registrant or contractor required to be registered may be represented by an attorney;
5. Advisory that the complete investigation file is available for review at the office of the director during regular business hours;
6. Notice that the registrant or contractor required to be registered may present written and oral testimony and evidence to mitigate any planned enforcement action.

(c) The hearing will be conducted by the director or a hearing officer appointed by the director.

(d) Rescheduling of Hearing. The director, at his or her discretion, may delay and reschedule the date for such hearing upon written request of the registrant or contractor required to be registered, the director, the attorney general, a district attorney, or the involved local consumer group, provided the request is received not less than ten days prior to such hearing.

(e) Unmanageable Hearings. After a warning, the hearing officer may terminate any hearing that becomes unmanageable due to the behavior of any participants and enter an order by default against the party whose behavior made the hearing unmanageable.

(f) Decision. Following the close of the hearing, the director shall issue a written decision on the violation within 30 business days. A copy of the decision shall be sent to the registrant or contractor required to be registered, the director, the attorney general, the involved district attorney and local consumer group.

(g) Appeal. Any party to the hearing who is aggrieved by the decision may appeal under the applicable provisions of the Massachusetts Administrative Procedures Act, M.G.L. c. 30A.

(6) Registered and Unregistered Home Improvement Contractor Complaint Form. The director shall make a complaint form available to homeowners and other prospective complainants.

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(7) Limitations to Complaints. The submission of a complaint form will not result in an enforcement hearing if:

- (a) the complaint form was submitted more than three years after the contract for home improvements was signed by the homeowner or, absent a signed contract, the earlier of:
 - 1. the date of the first payment to the contractor; or
 - 2. the date work commenced on the project; or
- (b) the complaint form fails to state or allege that a violation of M.G.L. c. 142A or 201 CMR 18.00 was committed; or
- (c) OCABR dismisses the complaint for any reason.

(8) Receipt of Timely Complaints. For the purposes of determining whether a complaint form was submitted timely, complaint forms filed by U.S. mail shall be deemed filed on the date contained in the U.S. postal cancellation stamp or U.S. postmark, and not the date contained on a postal meter stamp. Complaint forms filed by facsimile or other electronic medium shall be deemed filed at OCABR on the date received by OCABR during usual business hours but not later than 5:00 P.M. Complaint forms filed by all other means shall be considered hand-delivered and shall be deemed filed on the date received by OCABR during usual business hours. Complaint forms received after usual business hours shall be deemed filed on the following business day.

(9) Notification of Contractor. After OCABR receives a timely complaint form complete with at least one allegation of a violation of M.G.L. c. 142A or 201 CMR 18.00, OCABR will mail a copy of that complaint form to the registrant or contractor required to be registered at the most recent address of record in the director's file, or in the case of an unregistered contractor, the address provided by the complainant. The mailing of the copy of the complaint form will constitute sufficient notice of the issues involved in the hearing, as required by 801 CMR 1.02(10)(c). The notice of the issues involved in the hearing shall be deemed sufficient if the complaint form is mailed to the most recent address of record in the director's file.

(10) Purpose of the Complaint Process and Enforcement Hearing. The purpose of the complaint process and hearing is to adjudicate whether the contractor committed violations of M.G.L. c. 142A and 201 CMR 18.00 and, if so, whether any administrative penalties should be issued against the contractor or his certificate of registration. The final agency decision arising from the submission of a complaint form will not result in any award, monetary or otherwise, to the complainant, even if the allegations in the complaint are proven with substantial evidence.

(11) Status of the Complainant as a Non-party. For the purposes of the complaint process and the enforcement hearing, the complainant shall not be considered a party to the hearing. The complainant shall be deemed a witness only and shall not have the right of direct and cross-examination of witnesses, the right to object to evidence, or the right to appeal any final agency decision.

(12) Injunctions, Restitution. The director, on his or her own initiative, may institute court action in accordance with 201 CMR 18.04(5), to obtain a permanent or temporary injunction or an order requiring restitution or completion of a home improvement contractor's contract with an owner.

(13) Fines and Criminal Penalties. The attorney general or a district attorney may initiate court action on his or her own initiative in accordance with 201 CMR 18.04(4).

18.04: Enforcement Actions

(1) Administrative Penalties. If the director determines that any registrant or contractor required to be registered is liable for a violation of any of the provisions of 201 CMR 18.00 or M.G.L. c. 142A, the director may institute one or more of the following actions:

(2) Allowable Actions.

- (a) suspend the registrant's certificate of registration for such period of time as shall be determined by the director;

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- (b) revoke the registrant's certificate of registration;
 - (c) send a letter of reprimand to the registrant;
 - (d) assess an administrative penalty not to exceed \$2,000, payable within 30 days of the date of the order of assessment, for each violation of any provisions of 201 CMR 18.00 and/or M.G.L. c. 142A committed by the home improvement contractor(s) or subcontractor(s) who are registered or required to be registered under 201 CMR 18.00. This penalty shall be deposited to the fund.
- (3) Pendency of a Claim. The pendency of a claim against the fund shall not limit the director from taking enforcement action against any registrant pursuant to 201 CMR 18.00 or M.G.L. c. 142A.
- (4) Fines and Criminal Penalties - Attorney General or District Attorney.
- (a) Sought by Attorney General or District Attorney. Fines and imprisonment specified in 201 CMR 18.00 and M.G.L. c. 142A may be sought by the attorney general or a district attorney, and such fines and imprisonment shall be in addition to any administrative penalty otherwise applicable thereto.
 - (b) Operating Without a Certificate. Any home improvement contractor or subcontractor who shall knowingly, willfully, or negligently operate without obtaining a certificate of registration as required by 201 CMR 18.00 and M.G.L. c. 142A or any home improvement contractor or subcontractor who continues to operate after revocation of or during suspension of, or who had failed to renew his certificate of registration, shall be punished by a fine of up to \$5,000 or imprisonment in a jail or house of correction for not more than two years or by both such fine and imprisonment.
 - (c) Other Violations. Any person who knowingly and willfully violates any of the provisions of 201 CMR 18.00 or M.G.L. c. 142A with respect to which a greater penalty is not otherwise provided by the provisions of 201 CMR 18.00 or M.G.L. c. 142A or by any other law may be punished by a fine of up to \$2,000 or by imprisonment in a jail or house of correction for not more than one year or by both such fine and imprisonment.
- (5) Injunctions, Restitution.
- (a) Order from Superior Court. If the director concludes that the continuing conduct of any person alleged to be in violation of 201 CMR 18.00 and M.G.L. c. 142A may result in substantial or irreparable harm to any citizen of the Commonwealth, the director may seek:
 - 1. a permanent or temporary injunction with respect to the conduct from the superior court of any county in which the alleged violation is occurring, or in which the violator has its principal place of business; or
 - 2. an order requiring restitution or satisfactory completion of the home improvement contractor's contract with an owner.
 - (b) Bond not Required. The director shall not be required to file a bond or to show a lack of an adequate remedy at law when seeking an injunction under M.G.L. c. 142A against any person, association, partnership, or corporation not registered under 201 CMR 18.00 and M.G.L. c. 142A.
 - (c) Permit Requirements, Prohibited Acts and Penalties.
 - 1. Permit Requirements. All building permits for residential contracting work covered by 201 CMR 18.00 and M.G.L. c. 142A shall:
 - a. clearly state that persons contracting with unregistered contractors do not have access to the guaranty fund; and
 - b. contain the registered home improvement contractor's or subcontractor's certificate number.
 - 2. Prohibited Acts. The following acts are prohibited by registered home improvement contractors or subcontractors, and those required to register under the provisions of 201 CMR 18.00 and M.G.L. c. 142A:
 - a. operating without a certificate of registration issued by the director;
 - b. abandoning or failing to perform, without justification, any contract or project engaged in or undertaken, or deviating from or disregarding plans or specifications in any material way without the consent of the owner, except for changes in plans, specifications, or construction techniques required by building regulations;

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- c. failing to credit the owner any payment they have made to the contractor or his or her salesperson in connection with a residential contracting transaction;
- d. making any material misrepresentation in the procurement of a contract or making any false promise of a character likely to influence, persuade or induce the procurement of contract;
- e. acting directly, regardless of the receipt or expectation of receipt of compensation or gain from the mortgage lender, in connection with a residential contracting transaction by preparing, offering or negotiating or attempting to or agreeing to prepare, arrange, offer or negotiate a mortgage loan on behalf of a mortgage lender;
- f. acting as a mortgage broker or agent for any mortgage lender;
- g. publishing, directly or indirectly, any advertisement relating to residential contracting which does not contain the home improvement contractor's or subcontractor's certificate of registration number or which does contain an assertion, representation or statement of fact which is false, deceptive, or misleading;
- h. advertising in any manner that a registrant is registered under 201 CMR 18.00 unless the advertisement includes an accurate reference to the home improvement contractor's or subcontractor's certificate of registration;
- i. violating any of the building laws of the Commonwealth or of any political subdivision thereof;
- j. misrepresenting a material fact by an applicant in obtaining a certificate of registration;
- k. failing to notify the director of any change of trade name or address as required by 201 CMR 18.02(7)(e)1.;
- l. conducting a residential contracting business in any name other than the one in which the home improvement contractor or subcontractor is registered;
- m. failing to pay for materials or services rendered in connection with his or her operating as a home improvement contractor or subcontractor where he or she has received sufficient funds as payment for the particular construction work, project or operation for which the services or materials were rendered or purchased;
- n. failing to comply with any order, demand or requirement lawfully made by the director or fund administrator under and within the authority of 201 CMR 18.00 and M.G.L. c. 142A;
- o. demanding or receiving payment in violation of 201 CMR 18.05(2)(a)5. or 6. or 18.05(2)(b);
- p. violating any other provisions of 201 CMR 18.00 and M.G.L. c. 142A.
- q. failing to pay to the Guaranty Fund in full, including interest, any amount paid from said fund because of the conduct of the registrant.
- r. performing any act considered grounds for refusal to register or renew in 201 CMR 18.05(2)(b)2.
- s. failing to display the registration number on every contract, building permit and advertisement as required by 201 CMR 18.05(2)(a)2., 18.04(5)(c)1.b., 18.04(5)(c)2.g. and h.

(d) Penalties. Violations of 201 CMR 18.00 or M.G.L. c. 142A shall subject the violator to the administrative sanctions of 201 CMR 18.04(1) and to criminal prosecution or other court action as prescribed in 201 CMR 18.04(4) and (5).

(e) Deceptive Act. Violations of any of the provisions of 201 CMR 18.00 and M.G.L. c. 142A shall constitute an unfair or deceptive act under the provisions of M.G.L. c. 93A.

18.05: Residential Contracting Services Contracts

(1) Contract in Writing. Every agreement between a home improvement contractor and an owner to perform residential contracting services in an amount in excess of \$1,000 shall be in writing.

(2) Contents of Contract.

(a) Documents and Information. Every agreement to perform residential contracting services in excess of \$1,000 shall include, but not be limited to, the following documents and information:

18.05: continued

1. the complete agreement between the owner and the contractor and a clear description of any other documents which are or shall be incorporated into said agreement;
2. the full names, federal ID number if applicable, (exclusive of social security number), address (exclusive of post office box addresses), the registration number of the home improvement contractor, which must appear on the first page of the contract, the name(s) of the salesperson(s), if any, who solicited or negotiated the contract and the date when said contract was executed by the parties;
3. the date on which the work under the contract is scheduled to begin and the date on which said work is scheduled to be substantially completed;
4. a detailed description of the work to be done and the materials to be used;
5. the total amount agreed to be paid for the work to be performed under the contract;
6. a time schedule of payments to be made under said contract and the amount of each payment stated in dollars, including all finance charges, if any. Any deposit required under the contract to be paid in advance of the commencement of work under said contract shall not exceed the greater of $\frac{1}{3}$ of the total contract price or the actual cost of any material or equipment of a special order or custom made nature, which must be ordered in advance of the commencement of the work, in order to assure that the project will proceed on schedule. No final payment shall be demanded until the contract is completed to the satisfaction of the parties thereto;
7. the signature of all parties shall be affixed to the contract;
8. there shall be a clear and conspicuous notice appearing in the contract stating:
 - a. that all home improvement contractors and subcontractors shall be registered by the director and that any inquiries about a contractor or subcontractor relating to a registration should be directed to:
 Office of Consumer Affairs and Business Regulation
 Home Improvement Contractor Registration
 10 Park Plaza, Room 5170
 Boston, MA 02116
 (617) 973-8700
 - b. the owner's three-day cancellation rights under M.G.L. c. 93, § 48; M.G.L. c. 140D, § 10 or M.G.L. c. 255D, §§ 3 and 14, as may be applicable.
 - c. all warranties and the owner's rights under the provisions of 201 CMR 18.00 and M.G.L. c. 142A;
 - d. in ten point bold type or larger, directly above the space provided for the signature, the following statement:
DO NOT SIGN THIS CONTRACT IF THERE ARE ANY BLANK SPACES
 - e. whether any lien or security interest is on the residence as a consequence of the contract;
9. an enumeration of such other matters upon which the owner and the contractor may lawfully agree; provided, however that no such agreement may waive any rights conveyed to the owner under the provisions of 201 CMR 18.00 and M.G.L. c. 142A; and
10. any other provision otherwise required by the applicable laws of the Commonwealth.

(b) Construction Related Permits - Notice to Owner. Any contract entered into between a home improvement contractor and an owner shall contain a clause informing the owner of the following:

1. any and all necessary construction-related permits;
2. that it shall be the obligation of the home improvement contractor to obtain such permits as the owner's agent; and
3. that owners who secure their own construction-related permits or contract with unregistered contractors will be excluded from the Guaranty Fund provisions of M.G.L. c. 142A.

(c) Acceleration of Payment. No contract shall contain an acceleration clause under which any part or all of the balance not yet due may be declared due and payable because the holder deems himself or herself to be insecure. However, where the contractor deems himself to be insecure he or she may require as a prerequisite to continuing said work that the balance of funds due under the contract, which are in the possession of the owner, shall be placed in a joint escrow account requiring the signatures of the home improvement contractor and owner for withdrawal.

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(d) Copy to Owner. At the time of signing, the owner shall be furnished with a copy of the contract signed by both the home improvement contractor and the owner. No work shall begin prior to the signing of the contract and transmittal to the owner of a copy of such contract.

(e) Arbitration. Any contract entered into between a home improvement contractor and owner may provide that the home improvement contractor may initiate alternative dispute resolution through any private arbitration services approved by the director, as provided in M.G.L. c. 142A, provided, that said alternative dispute resolution provision is clearly and conspicuously disclosed in the contract, in language designated by the director, and that each party separately signs and dates the provision, thereby assenting to the procedure. The following language and format is acceptable:

THE CONTRACTOR AND THE HOMEOWNER HEREBY MUTUALLY AGREE IN ADVANCE THAT IN THE EVENT THE CONTRACTOR HAS A DISPUTE CONCERNING THIS CONTRACT, THE CONTRACTOR MAY SUBMIT SUCH DISPUTE TO A PRIVATE ARBITRATION SERVICE WHICH HAS BEEN APPROVED BY THE DIRECTOR OF THE EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATIONS AND THE CONSUMER SHALL BE REQUIRED TO SUBMIT TO SUCH ARBITRATION AS PROVIDED IN M.G.L. c. 142A.

Owner: _____

Contractor: _____

NOTICE: *The signatures of the parties above apply only to the agreement of the parties to alternate dispute resolution initiated by the contractor. The homeowner may initiate alternative dispute resolution even where this section is not signed separately by the parties.*

(3) Dispute Resolution.

(a) Court Action. Any party may bring an action to enforce any provisions of 201 CMR 18.00 and M.G.L. c. 142A, in superior court, the district court, or the small claims division of the district court.

(b) Owner Right to Arbitration. In the alternative, an eligible owner may request that a dispute resulting from and relating to residential contracting be decided under the terms of a private arbitration service approved by the director. (*See 201 CMR 14.00: Home Improvement Contractor Arbitration and Guaranty Fund.*)

(c) Contractor Right to Arbitration. The home improvement contractor may initiate dispute resolution through private arbitration services approved by the director, provided: that the contract between the owner and the home improvement contractor contains such a clause as provided in 201 CMR 18.05(2)(e).

(d) Validity of Contract. Contracts which fail to comply with the requirements of 201 CMR 18.00 and M.G.L. c. 142A shall not be invalid solely because of noncompliance.

REGULATORY AUTHORITY

201 CMR 18.00: M.G.L. c. 142A.