

2843

2009-2010 Regular Sessions

I N S E N A T E

March 4, 2009

Introduced by Sens. STACHOWSKI, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law and the general business law, in relation to home improvement contractors

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The banking law is amended by adding a new section 595-c to
2 read as follows:

3 S 595-C. RESTRICTIONS ON RELATIONSHIPS WITH HOME IMPROVEMENT CONTRAC-
4 TORS. 1. A MORTGAGE BANKER, EXEMPT ORGANIZATION OR MORTGAGE BROKER SHALL
5 NOT PAY A REFERRAL FEE OR OTHER COMPENSATION TO A HOME IMPROVEMENT
6 CONTRACTOR IN CONNECTION WITH THE MAKING OF A MORTGAGE LOAN, UNLESS: THE
7 HOME IMPROVEMENT CONTRACTOR IS AN AGENT OR EMPLOYEE OF SUCH MORTGAGE
8 BANKER, EXEMPT ORGANIZATION OR MORTGAGE BROKER; SUCH RELATIONSHIP HAS
9 BEEN PREVIOUSLY REPORTED TO THE DEPARTMENT; SUCH RELATIONSHIP IS SEPA-
10 RATELY AND CONSPICUOUSLY DISCLOSED IN WRITING TO THE CONSUMER; AND SUCH
11 RELATIONSHIP IS SUBJECT TO ANY ADDITIONAL CONDITIONS OR REQUIREMENTS AS
12 PROVIDED IN REGULATIONS PROMULGATED BY THE BANKING BOARD. FOR PURPOSES
13 OF THIS SUBDIVISION, THE TERM COMPENSATION SHALL NOT MEAN OR INCLUDE
14 THE PAYMENT OF LOAN PROCEEDS FOR WORK PERFORMED OR MATERIALS PURCHASED.

15 2. IF A HOME IMPROVEMENT CONTRACTOR IS SOLICITING, PROCESSING, PLACING
16 OR NEGOTIATING A MORTGAGE LOAN WITHOUT BEING REGISTERED OR SPECIFICALLY
17 EXEMPTED FROM REGISTRATION, A MORTGAGE BANKER, MORTGAGE BROKER OR EXEMPT
18 ORGANIZATION MAY NOT ENGAGE IN SUCH MORTGAGE TRANSACTION WITH THE
19 CONTRACTOR AND SHALL PROMPTLY NOTIFY THE DEPARTMENT THAT SUCH CONTRACTOR
20 IS ACTING AS AN UNREGISTERED MORTGAGE BROKER.

21 3. IF THE SUPERINTENDENT DETERMINES, IN HIS OR HER SOLE DISCRETION,
22 THAT THERE IS A PATTERN OF BONA FIDE COMPLAINTS OF ABUSIVE PRACTICES
23 INVOLVING A RELATIONSHIP BETWEEN A MORTGAGE BANKER, MORTGAGE BROKER OR
24 EXEMPT ORGANIZATION AND A HOME IMPROVEMENT CONTRACTOR OR CONTRACTORS
25 WITH WHOM IT HAS A FORMAL OR INFORMAL BUSINESS ARRANGEMENT, THE SUPER-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 INTENDENT MAY, AFTER NOTICE AND A HEARING, IMPOSE CONDITIONS ON SUCH
2 MORTGAGE BANKER, MORTGAGE BROKER OR EXEMPT ORGANIZATION, INCLUDING BUT
3 NOT LIMITED TO: REQUIRING THE TERMINATION OF ANY RELATIONSHIP OR BUSI-
4 NESS ARRANGEMENT WITH A SPECIFIC CONTRACTOR WHICH HAS RESULTED IN
5 ABUSIVE PRACTICES; REQUIRING VERIFICATION PRIOR TO MAKING ANY LOANS THAT
6 A CONTRACTOR IS LICENSED AND MEETING ANY OTHER REQUIREMENTS OF ANY LOCAL
7 LAWS; OBTAINING A COPY OF THE SIGNED WRITTEN AGREEMENT REQUIRED UNDER
8 SECTION SEVEN HUNDRED SEVENTY-ONE OF THE GENERAL BUSINESS LAW AND VERI-
9 FYING THAT THE APPLICANT HAS RECEIVED SUCH A COPY; NOTIFYING THE APPLI-
10 CANT OF THEIR RIGHT TO CONSULT WITH THE ATTORNEY GENERAL'S OFFICE,
11 CONSUMER PROTECTION BOARD OR BETTER BUSINESS BUREAU TO DETERMINE IF ANY
12 COMPLAINTS HAVE BEEN FILED AGAINST A CONTRACTOR; REQUIRING THE DISCLO-
13 SURE OF THE RESPONSIBILITIES OF HOME IMPROVEMENT CONTRACTORS AND THE
14 RIGHTS OF CONSUMERS AND OPTIONS FOR PURSUING REMEDIES IN THE EVENT OF
15 PROBLEMS; REQUIRING THE INSPECTION OF ANY WORK DONE TO DATE; AND ANY
16 OTHER RESTRICTIONS OR CONDITIONS THAT THE SUPERINTENDENT DEEMS NECESSARY
17 AND APPROPRIATE TO PROTECT CONSUMERS.

18 4. FOR THE PURPOSES OF THIS SECTION:

19 (A) "HOME IMPROVEMENT" MEANS THE REPAIRING, REMODELING, ALTERING,
20 CONVERTING, OR MODERNIZING OF, OR ADDING TO, RESIDENTIAL PROPERTY AND
21 SHALL INCLUDE, BUT NOT BE LIMITED TO, THE CONSTRUCTION, ERECTION,
22 REPLACEMENT, OR IMPROVEMENT OF DRIVEWAYS, SWIMMING POOLS, SIDING, INSU-
23 LATION, ROOFING, WINDOWS, TERRACES, PATIOS, LANDSCAPING, FENCES, PORCH-
24 ES, GARAGES, SOLAR ENERGY SYSTEMS, FLOORING, BASEMENTS, AND OTHER
25 IMPROVEMENTS OF THE RESIDENTIAL PROPERTY AND ALL STRUCTURES OR LAND
26 ADJACENT TO IT. "HOME IMPROVEMENT" SHALL ALSO MEAN THE INSTALLATION OF
27 HOME IMPROVEMENT GOODS OR THE FURNISHING OF HOME IMPROVEMENT SERVICES.
28 "HOME IMPROVEMENT" SHALL NOT INCLUDE:

29 (1) THE SALE OR CONSTRUCTION OF A NEW HOME;

30 (2) THE SALE OF GOODS BY A SELLER WHO NEITHER ARRANGES TO PERFORM NOR
31 PERFORMS, DIRECTLY OR INDIRECTLY, ANY WORK OR LABOR IN CONNECTION WITH
32 THE INSTALLATION OR APPLICATION OF THE GOODS;

33 (3) THE SALE OR INSTALLATION OF APPLIANCES, SUCH AS STOVES, REFRIGERA-
34 TORS, FREEZERS, ROOM AIR CONDITIONERS, DISHWASHERS, CLOTHES WASHERS OR
35 DRYERS, WHICH ARE DESIGNED TO BE REMOVABLE FROM THE PREMISES WITHOUT
36 MATERIAL ALTERATION THEREOF;

37 (4) THE SALE OR INSTALLATION OF DECORATIVE GOODS OR SERVICES, SUCH AS
38 DRAPERIES AND CARPETS; OR

39 (5) THE PERFORMANCE OF REPAIRS, REPLACEMENTS, OR OTHER SERVICES PURSU-
40 ANT TO AN EXPRESS OR IMPLIED WARRANTY, OR A MAINTENANCE AGREEMENT.

41 (B) "HOME IMPROVEMENT CONTRACTOR" MEANS A PERSON, FIRM OR CORPORATION
42 WHICH OWNS OR OPERATES A HOME IMPROVEMENT BUSINESS OR WHO UNDERTAKES,
43 OFFERS TO UNDERTAKE OR AGREES TO PERFORM ANY HOME IMPROVEMENT FOR A FEE
44 AND FOR WHOM THE TOTAL CASH PRICE OF ALL OF HIS HOME IMPROVEMENT
45 CONTRACTS WITH ALL HIS CUSTOMERS EXCEEDS ONE THOUSAND FIVE HUNDRED
46 DOLLARS DURING ANY PERIOD OF TWELVE CONSECUTIVE MONTHS. HOME IMPROVEMENT
47 CONTRACTOR DOES NOT INCLUDE A PERSON, FIRM, CORPORATION, LANDLORD, COOP-
48 ERATIVE CORPORATION, CONDOMINIUM BOARD OF MANAGERS, JOINT TENANT OR
49 CO-TENANT THAT OWNS, IN WHOLE OR IN PART, THE PROPERTY TO BE IMPROVED.

50 S 2. Subdivision 1 of section 771 of the general business law is
51 amended by adding a new paragraph (i) to read as follows:

52 (I) WHERE THE CONTRACTOR IS REFERRING OR RECOMMENDING THE OWNER TO A
53 BANKING INSTITUTION, MORTGAGE BANKER OR OTHER FINANCING ENTITY FOR A
54 LOAN TO BE SECURED BY A MORTGAGE ON OR A SECURITY INTEREST IN THE REAL
55 PROPERTY, THE FOLLOWING NOTICE TO THE OWNER IN CLEAR AND CONSPICUOUS
56 BOLD FACE TYPE: "IF YOU OBTAIN OR USE ANY TYPE OF MORTGAGE LOAN TO

1 FINANCE THIS PROJECT, YOU COULD LOSE YOUR HOME AND ANY MONEY YOU HAVE
2 PUT INTO IT IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN."
3 S 3. This act shall take effect on the one hundred twentieth day after
4 it shall have become a law, provided that any such rules and regulations
5 as shall be necessary to implement the provisions of this act are
6 authorized to be promulgated prior to such effective date; and provided
7 that section two of this act shall take effect on the one hundred eight-
8 ieth day after it shall have become a law.