

1210

2009-2010 Regular Sessions

I N S E N A T E

January 27, 2009

Introduced by Sens. THOMPSON, ONORATO -- read twice and ordered printed,
and when printed to be committed to the Committee on Cities

AN ACT to amend the general city law, in relation to the regulation of
contractors in a city with a population of more than two hundred
eighty-nine thousand but less than three hundred five thousand

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

Section 1. The general city law is amended by adding a new article 5
to read as follows:

ARTICLE 5
CONTRACTORS

SECTION 75. LEGISLATIVE FINDINGS.

75-A. DEFINITIONS.

75-B. EXEMPTIONS.

75-C. CONTRACTORS LICENSE BOARD.

75-D. POWERS AND DUTIES OF BOARD.

75-E. CLASSIFICATION.

75-F. POWERS TO CLASSIFY AND LIMIT OPERATIONS.

75-G. LICENSES REQUIRED.

75-H. ISSUANCE OF BUILDING PERMITS; OWNER-BUILDER REGISTRATION.

75-I. ADVERTISING.

75-J. AIDING OR ABETTING.

75-K. INVESTIGATION PERMITTED.

75-L. VIOLATION FOR UNLICENSED ACTIVITY.

75-M. STATE DISASTER EMERGENCY; ACTING AS A CONTRACTOR WITHOUT A
LICENSE; PENALTY.

75-N. ENHANCED PENALTIES WHEN ELDERLY PERSONS ARE TARGETED.

75-O. NO LICENSE ISSUED WHEN.

75-P. REQUIREMENTS TO MAINTAIN LICENSE.

75-Q. APPLICATION; FEES.

75-R. FORM FOR LICENSES.

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

LBD04757-01-9

1 75-S. PLACE OF BUSINESS AND POSTING OF LICENSE.
2 75-T. FEES; BIENNIAL RENEWALS; INACTIVE LICENSE.
3 75-U. ACTION ON APPLICATIONS.
4 75-V. BOND.
5 75-W. REVOCATION, SUSPENSION, AND RENEWAL OF LICENSES.
6 75-X. DEATH OR DISSOCIATION.
7 75-Y. CIVIL ACTION.
8 75-Z. VIOLATION; PENALTIES.
9 76. FORFEITURE OF PROPERTY FOR UNLICENSED ACTIVITY.
10 76-A. INJUNCTION.
11 76-B. PAYMENT FOR GOODS AND SERVICES.
12 76-C. DISCLOSURE; CONTRACTS.
13 76-D. FALSE STATEMENT.
14 76-E. DISCIPLINARY ACTION AGAINST LICENSEE.
15 76-F. APPLICABILITY TO CITIES WITH A POPULATION OF LESS THAN TWO
16 HUNDRED EIGHTY-NINE THOUSAND.

17 S 75. LEGISLATIVE FINDINGS. THE LEGISLATURE HEREBY FINDS AND DECLARES
18 THAT THE HEALTH AND SAFETY OF THE POPULATION LIVING IN AND AROUND THE
19 MANY CONSTRUCTION PROJECTS IN ANY CITY HAVING A POPULATION OF MORE THAN
20 TWO HUNDRED EIGHTY-NINE THOUSAND BUT LESS THAN THREE HUNDRED FIVE THOU-
21 SAND INHABITANTS IS A MATTER OF SUBSTANTIAL STATE CONCERN, WHICH IS
22 THREATENED BY ACCIDENTS AND INJURIES TO PERSONS AND PROPERTY OCCURRING
23 REGULARLY DUE TO UNLICENSED GENERAL CONTRACTORS WHO FAIL TO COMPLY WITH
24 BUILDING CODE AND SAFETY REQUIREMENTS.

25 THESE THREATS MAY BE RESOLVED BY THE LICENSING OF GENERAL CONTRACTORS
26 AS PART OF A COMPREHENSIVE PROGRAM TO ENSURE COMPLIANCE WITH BUILDING
27 CODES, ZONING REGULATIONS, AND SAFETY GUIDELINES IN EACH CITY IN THE
28 STATE.

29 S 75-A. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS
30 SHALL HAVE THE FOLLOWING MEANINGS:

31 1. "BOARD" MEANS THE CONTRACTORS LICENSE BOARD.
32 2. "CHLOROFLUOROCARBON" OR "CFC" MEANS ANY MEMBER OF THE FAMILY OF
33 SUBSTANCES CONTAINING CARBON, FLUORINE, AND CHLORINE, INCLUDING, WITHOUT
34 LIMITATION, THOSE COMPOUNDS KNOWN AS CFC-11, CFC-12, CFC-13, CFC-14,
35 CFC-113, CFC-114, CFC-115, CFC-116, CFC-500, CFC-502, AND CFC-503, AND
36 ANY COMBINATION OR MIXTURE CONTAINING ANY OF THESE CHLOROFLUOROCARBON
37 COMPOUNDS.

38 3. "CONTRACTOR" MEANS ANY PERSON WHO BY ONESELF OR THROUGH OTHERS
39 OFFERS TO UNDERTAKE, OR HOLDS ONESELF OUT AS BEING ABLE TO UNDERTAKE, OR
40 DOES UNDERTAKE TO ALTER, ADD TO, SUBTRACT FROM, IMPROVE, ENHANCE, OR
41 BEAUTIFY ANY REALTY OR CONSTRUCT, ALTER, REPAIR, ADD TO, SUBTRACT FROM,
42 IMPROVE, MOVE, WRECK, OR DEMOLISH ANY BUILDING, HIGHWAY, ROAD, RAILROAD,
43 EXCAVATION, OR OTHER STRUCTURE, PROJECT, DEVELOPMENT, OR IMPROVEMENT, OR
44 DO ANY PART THEREOF, INCLUDING THE ERECTION OF SCAFFOLDING OR OTHER
45 STRUCTURES OR WORKS IN CONNECTION THEREWITH. "CONTRACTOR", TO THE EXTENT
46 ALLOWED UNDER FEDERAL LAW INCLUDES A SUBCONTRACTOR, A SPECIALTY CONTRAC-
47 TOR, AND ANY PERSON, GENERAL ENGINEERING, GENERAL BUILDING, OR SPECIALTY
48 CONTRACTOR WHO PERFORMS ANY OF THE ACTIVITIES SET FORTH IN THIS SUBDIVI-
49 SION DIRECTLY OR INDIRECTLY FOR THE FEDERAL GOVERNMENT.

50 4. "OFFICE" MEANS THE OFFICE OF STRATEGIC PLANNING OF THE CITY OF
51 BUFFALO.

52 5. "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE OFFICE OF
53 STRATEGIC PLANNING OF THE CITY OF BUFFALO.

54 6. "HYDROCHLOROFLUOROCARBON" OR "HCFC" MEANS ANY MEMBER OF THE FAMILY
55 OF SUBSTANCES CONTAINING HYDROGEN, CARBON, FLUORINE, AND CHLORINE,
56 INCLUDING, WITHOUT LIMITATION, THOSE COMPOUNDS KNOWN AS HCFC-22 AND

1 HCFC-123 AND ANY COMBINATION OR MIXTURE CONTAINING ANY OF THREE HYDRO-
2 CHLOROFLUOROCARBON COMPOUNDS.

3 7. "INSPECTOR" MEANS ANY PERSON EMPLOYED BY THE OFFICE TO INVESTIGATE
4 MATTERS RELATING TO ANY PERSON WHO FURNISHES COMMODITIES OR SERVICES FOR
5 WHICH A LICENSE IS REQUIRED FROM THE OFFICE.

6 8. "REFRIGERANT RECOVERY AND RECYCLING EQUIPMENT" MEANS A DEVICE USED
7 TO RECOVER AND TO PURIFY CFCS FROM A DEVICE FOR LATER REUSE.

8 9. "RME" MEANS RESPONSIBLE MANAGING EMPLOYEE.

9 10. "SALE" MEANS ANY ARRANGEMENT BETWEEN TWO OR MORE PERSONS AS A
10 RESULT OF WHICH THERE IS, OR IS TO BE, A TRANSFER OF PROPERTY FOR A
11 CONSIDERATION.

12 IF ANY PROVISION OF THIS SECTION, OR THE APPLICATION THEREOF TO ANY
13 PERSON, OR CIRCUMSTANCES, IS HELD TO BE INVALID, THE INVALIDITY SHALL
14 NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION WHICH CAN BE
15 GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS
16 END THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

17 S 75-B. EXEMPTIONS. THE PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO:

18 1. OFFICERS AND EMPLOYEES OF THE UNITED STATES, THE STATE, OR ANY
19 COUNTY WHILE IN THE PERFORMANCE OF THEIR GOVERNMENTAL DUTIES;

20 2. ANY PERSON ACTING AS A RECEIVER, TRUSTEE IN BANKRUPTCY, PERSONAL
21 REPRESENTATIVE, OR ANY OTHER PERSON ACTING UNDER ANY ORDER OR AUTHORI-
22 ZATION OF ANY COURT;

23 3. A PERSON WHO SELLS OR INSTALLS ANY FINISHED PRODUCTS, MATERIALS, OR
24 ARTICLES OF MERCHANDISE THAT ARE NOT ACTUALLY FABRICATED INTO AND DO NOT
25 BECOME A PERMANENT FIXED PART OF THE STRUCTURE, OR TO THE CONSTRUCTION,
26 ALTERATION, IMPROVEMENT, OR REPAIR OF PERSONAL PROPERTY;

27 4. ANY PROJECT OR OPERATION FOR WHICH THE AGGREGATE CONTRACT PRICE FOR
28 LABOR, MATERIALS, TAXES, AND ALL OTHER ITEMS IS NOT MORE THAN ONE THOU-
29 SAND DOLLARS. THIS EXEMPTION SHALL NOT APPLY IN ANY CASE WHERE A BUILD-
30 ING PERMIT IS REQUIRED REGARDLESS OF THE AGGREGATE CONTRACT PRICE, NOR
31 WHERE THE UNDERTAKING IS ONLY A PART OF A LARGER OR MAJOR PROJECT OR
32 OPERATION, WHETHER UNDERTAKEN BY THE SAME OR A DIFFERENT CONTRACTOR OR
33 IN WHICH A DIVISION OF THE PROJECT OR OPERATION IS MADE IN CONTRACTS OF
34 AMOUNTS NOT MORE THAN ONE THOUSAND DOLLARS FOR THE PURPOSE OF EVADING
35 THIS ARTICLE OR OTHERWISE;

36 5. A REGISTERED ARCHITECT OR PROFESSIONAL ENGINEER ACTING SOLELY IN
37 THE PERSON'S PROFESSIONAL CAPACITY;

38 6. ANY PERSON WHO ENGAGES IN THE ACTIVITIES REGULATED IN THIS ARTICLE
39 AS AN EMPLOYEE WITH WAGES AS THE PERSON'S SOLE COMPENSATION;

40 7. OWNERS OR LESSEES OF PROPERTY WHO BUILD OR IMPROVE RESIDENTIAL,
41 FARM, INDUSTRIAL, OR COMMERCIAL BUILDINGS OR STRUCTURES ON PROPERTY FOR
42 THEIR OWN USE, OR FOR USE BY THEIR GRANDPARENTS, PARENTS, SIBLINGS, OR
43 CHILDREN AND WHO DO NOT OFFER THE BUILDINGS OR STRUCTURES FOR SALE OR
44 LEASE; PROVIDED THAT THIS EXEMPTION SHALL NOT APPLY TO ELECTRICAL OR
45 PLUMBING WORK THAT MUST BE PERFORMED ONLY BY PERSONS OR ENTITIES
46 LICENSED UNDER THIS ARTICLE. IN ALL ACTIONS BROUGHT UNDER THIS SUBDIVI-
47 SION, PROOF OF THE SALE OR LEASE, OR OFFERING FOR SALE OR LEASE, OF THE
48 STRUCTURE NOT MORE THAN ONE YEAR AFTER COMPLETION IS PRIMA FACIE
49 EVIDENCE THAT THE CONSTRUCTION OR IMPROVEMENT OF THE STRUCTURE WAS
50 UNDERTAKEN FOR THE PURPOSE OF SALE OR LEASE; PROVIDED THAT THIS
51 PROVISION SHALL NOT APPLY TO RESIDENTIAL PROPERTIES SOLD OR LEASED TO
52 EMPLOYEES OF THE OWNER OR LESSEE; PROVIDED FURTHER THAT IN ORDER TO
53 QUALIFY FOR THIS EXEMPTION THE OWNER OR LESSEE MUST REGISTER FOR THE
54 EXEMPTIONS AS PROVIDED IN SECTION SEVENTY-FIVE-H OF THIS ARTICLE. ANY
55 OWNER OR LESSEE OF PROPERTY FOUND TO HAVE VIOLATED THIS PARAGRAPH SHALL
56 NOT BE PERMITTED TO ENGAGE IN ANY ACTIVITIES PURSUANT TO THIS PARAGRAPH

OR TO REGISTER UNDER SECTION SEVENTY-FIVE-H OF THIS ARTICLE FOR A PERIOD OF THREE YEARS. THERE IS A PRESUMPTION THAT AN OWNER OR LESSEE HAS VIOLATED THIS SECTION, WHEN THE OWNER OR LESSEE OBTAINS AN EXEMPTION FROM THE LICENSING REQUIREMENTS OF SECTION SEVENTY-FIVE-G OF THIS ARTICLE MORE THAN ONCE IN TWO YEARS;

8. ANY JOINT VENTURE IF ALL MEMBERS THEREOF HOLD LICENSES ISSUED UNDER THIS ARTICLE;

9. ANY PROJECT OR OPERATION WHERE IT IS DETERMINED BY THE BOARD THAT LESS THAN TEN PERSONS ARE QUALIFIED TO PERFORM THE WORK IN QUESTION AND THAT THE WORK DOES NOT POSE A POTENTIAL DANGER TO PUBLIC HEALTH, SAFETY, AND WELFARE; OR

10. ANY PUBLIC WORKS PROJECT WHICH IS DEEMED NECESSARY AND IN THE PUBLIC INTEREST BY THE CONTRACTING AGENCY.

S 75-C. CONTRACTORS LICENSE BOARD. 1. THERE SHALL BE A CONTRACTORS LICENSE BOARD OF THIRTEEN MEMBERS APPOINTED BY THE MAYOR.

2. OF THE BOARD MEMBERS:

(A) TEN SHALL BE CONTRACTORS WHO HAVE BEEN ACTIVELY ENGAGED IN THE CONTRACTING BUSINESS FOR A PERIOD OF NOT LESS THAN FIVE YEARS PRECEDING THE DATE OF THEIR APPOINTMENT;

(B) FIVE SHALL BE GENERAL ENGINEERING OR BUILDING CONTRACTORS, FIVE SHALL BE SPECIALTY CONTRACTORS, AND THREE SHALL BE NONCONTRACTORS. NO MEMBER SHALL RECEIVE ANY COMPENSATION FOR THE MEMBER'S SERVICES, BUT EACH SHALL BE REIMBURSED FOR NECESSARY TRAVELING EXPENSES INCURRED IN THE PERFORMANCE OF DUTIES.

3. NO ONE, EXCEPT THE THREE NONCONTRACTOR MEMBERS, SHALL BE ELIGIBLE FOR APPOINTMENT WHO DOES NOT AT THE TIME OF THE MEMBER'S APPOINTMENT HOLD A VALID AND UNEXPIRED LICENSE TO OPERATE AS A CONTRACTOR.

S 75-D. POWERS AND DUTIES OF BOARD. IN ADDITION TO ANY OTHER POWERS AND DUTIES AUTHORIZED BY LAW, THE BOARD SHALL:

1. GRANT LICENSES, INCLUDING CONDITIONAL LICENSES, TO CONTRACTORS PURSUANT TO THIS ARTICLE AND RULES;

2. ADOPT, AMEND, OR REPEAL SUCH RULES AND REGULATIONS AS THE BOARD MAY DEEM PROPER FULLY TO EFFECTUATE THIS ARTICLE AND CARRY OUT THE PURPOSE THEREOF, WHICH IS THE PROTECTION OF THE GENERAL PUBLIC. ALL RULES AND REGULATIONS SHALL BE APPROVED BY THE MAYOR AND THE EXECUTIVE DIRECTOR. THE RULES AND REGULATIONS MAY FORBID ACTS OR PRACTICES DEEMED BY THE BOARD TO BE DETRIMENTAL TO THE ACCOMPLISHMENT OF THE PURPOSE OF THIS ARTICLE. THE RULES AND REGULATIONS MAY REQUIRE CONTRACTORS TO MAKE REPORTS TO THE BOARD CONTAINING ANY ITEMS OF INFORMATION AS WILL BETTER ENABLE THE BOARD TO ENFORCE THIS ARTICLE AND RULES OR REGULATIONS, OR AS WILL BETTER ENABLE THE BOARD FROM TIME TO TIME TO AMEND THE RULES AND REGULATIONS MORE FULLY TO EFFECTUATE THE PURPOSES OF THIS ARTICLE. THE RULES AND REGULATIONS MAY REQUIRE CONTRACTORS TO FURNISH REPORTS TO OWNERS CONTAINING ANY MATTERS OF INFORMATION AS THE BOARD DEEMS NECESSARY TO PROMOTE THE PURPOSE OF THIS ARTICLE. THE ENUMERATION OF SPECIFIC MATTERS WHICH MAY PROPERLY BE MADE THE SUBJECT OF RULES AND REGULATIONS SHALL NOT BE CONSTRUED TO LIMIT THE BOARD'S GENERAL POWER TO MAKE ALL RULES AND REGULATIONS NECESSARY TO FULLY EFFECTUATE THE PURPOSE OF THIS ARTICLE;

3. ADOPT RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE RELATING TO CFCS, INCLUDING, BUT NOT LIMITED TO, PROCEDURES FOR THE DISPOSAL OF AIR CONDITIONING UNITS UTILIZING CFCS THAT INCLUDE MANDATORY RECOVERY AND RECYCLING OF CFCS;

4. ENFORCE THIS ARTICLE AND RULES AND REGULATIONS ADOPTED PURSUANT THERETO;

1 5. COLLECT FINES AND PENALTIES PURSUANT TO SECTION SEVENTY-FIVE-Z OF
2 THIS ARTICLE;
3 6. CONDUCT HEARINGS WITH RESPECT TO THE IMPOSITION OF FINES AND PENAL-
4 TIES IMPOSED PURSUANT TO SECTION SEVENTY-FIVE-Z OF THIS ARTICLE;
5 7. SUSPEND OR REVOKE ANY LICENSE FOR ANY CAUSE PRESCRIBED BY THIS
6 ARTICLE, OR FOR ANY VIOLATION OF THE RULES AND REGULATIONS, AND REFUSE
7 TO GRANT, RENEW, RESTORE, OR REINSTATE ANY LICENSE FOR ANY CAUSE WHICH
8 WOULD BE GROUNDS FOR REVOCATION OR SUSPENSION OF A LICENSE;
9 8. PUBLISH AND DISTRIBUTE PAMPHLETS AND CIRCULARS CONTAINING ANY
10 INFORMATION AS THE BOARD DEEMS PROPER TO FURTHER THE ACCOMPLISHMENT OF
11 THE PURPOSE OF THIS ARTICLE;
12 9. CONTRACT FOR PROFESSIONAL TESTING SERVICES TO PREPARE, ADMINISTER,
13 AND GRADE THE EXAMINATIONS FOR APPLICANTS AS MAY BE REQUIRED FOR THE
14 PURPOSES OF THIS ARTICLE. THE BOARD SHALL DETERMINE THE SCOPE AND LENGTH
15 OF THE EXAMINATIONS, WHETHER THE EXAMINATIONS SHALL BE ORAL, WRITTEN, OR
16 BOTH, AND THE SCORE THAT SHALL BE DEEMED A PASSING SCORE;
17 10. ORDER SUMMARY SUSPENSION OF A LICENSE;
18 11. ISSUE INFORMAL NONBINDING INTERPRETATIONS OR DECLARATORY RULINGS,
19 AND CONDUCT CONTESTED CASE PROCEEDINGS; AND
20 12. SUBPOENA WITNESSES AND DOCUMENTS, ADMINISTER OATHS, RECEIVE AFFI-
21 DAVITS AND ORAL TESTIMONY, INCLUDING TELEPHONIC COMMUNICATIONS.
22 S 75-E. CLASSIFICATION. 1. FOR THE PURPOSE OF CLASSIFICATION, THE
23 CONTRACTING BUSINESS INCLUDES ANY OR ALL OF THE FOLLOWING BRANCHES:
24 (A) GENERAL ENGINEERING CONTRACTING;
25 (B) GENERAL BUILDING CONTRACTING;
26 (C) SPECIALTY CONTRACTING.
27 2. A GENERAL ENGINEERING CONTRACTOR IS A CONTRACTOR WHOSE PRINCIPAL
28 CONTRACTING BUSINESS IS IN CONNECTION WITH FIXED WORKS REQUIRING
29 SPECIALIZED ENGINEERING KNOWLEDGE AND SKILL, INCLUDING THE FOLLOWING
30 DIVISIONS OR SUBJECTS: IRRIGATION, DRAINAGE, WATER POWER, WATER SUPPLY,
31 FLOOD CONTROL, INLAND WATERWAYS, HARBORS, DOCKS AND WHARVES, SHIPYARDS
32 AND PORTS, DAMS AND HYDROELECTRIC PROJECTS, LEVEES, RIVER CONTROL AND
33 RECLAMATION WORKS, RAILROADS, HIGHWAYS, STREETS AND ROADS, TUNNELS,
34 AIRPORTS AND AIRWAYS, SEWERS AND SEWAGE DISPOSAL PLANTS AND SYSTEMS,
35 WASTE REDUCTION PLANTS, BRIDGES, OVERPASSES, UNDERPASSES AND OTHER SIMI-
36 LAR WORKS, PIPELINES AND OTHER SYSTEMS FOR THE TRANSMISSION OF PETROLEUM
37 AND OTHER LIQUID OR GASEOUS SUBSTANCES, PARKS, PLAYGROUNDS AND OTHER
38 RECREATIONAL WORKS, REFINERIES, CHEMICAL PLANTS AND SIMILAR INDUSTRIAL
39 PLANTS REQUIRING SPECIALIZED ENGINEERING KNOWLEDGE AND SKILL, POWERHOU-
40 SES, POWER PLANTS AND OTHER UTILITY PLANTS AND INSTALLATIONS, MINES AND
41 METALLURGICAL PLANTS, LAND LEVELLING AND EARTH-MOVING PROJECTS, EXCAVAT-
42 ING, GRADING, TRENCHING, PAVING AND SURFACING WORK AND CEMENT AND
43 CONCRETE WORKS IN CONNECTION WITH THE ABOVE MENTIONED FIXED WORKS.
44 3. A GENERAL BUILDING CONTRACTOR IS A CONTRACTOR WHOSE PRINCIPAL
45 CONTRACTING BUSINESS IS IN CONNECTION WITH ANY STRUCTURE BUILT, BEING
46 BUILT, OR TO BE BUILT, FOR THE SUPPORT, SHELTER, AND ENCLOSURE OF
47 PERSONS, ANIMALS, CHATTELS, OR MOVABLE PROPERTY OF ANY KIND, REQUIRING
48 IN ITS CONSTRUCTION THE USE OF MORE THAN TWO UNRELATED BUILDING TRADES
49 OR CRAFTS, OR TO DO OR SUPERINTEND THE WHOLE OR ANY PART THEREOF.
50 4. A SPECIALTY CONTRACTOR IS A CONTRACTOR WHOSE OPERATIONS AS SUCH ARE
51 THE PERFORMANCE OF CONSTRUCTION WORK REQUIRING SPECIAL SKILL SUCH AS,
52 BUT NOT LIMITED TO, DRYWALL, PAINTING AND DECORATING, LANDSCAPING,
53 FLOORING, CARPET LAYING BY ANY INSTALLATION METHOD, OR ROOFING WORK, AND
54 OTHERS WHOSE PRINCIPAL CONTRACTING BUSINESS INVOLVES THE USE OF SPECIAL-
55 IZED BUILDING TRADES OR CRAFTS.

1 S 75-F. POWERS TO CLASSIFY AND LIMIT OPERATIONS. 1. THE CONTRACTORS
2 LICENSE BOARD MAY ADOPT RULES AND REGULATIONS NECESSARY TO EFFECT THE
3 CLASSIFICATION OF CONTRACTORS IN A MANNER CONSISTENT WITH ESTABLISHED
4 USAGE AND PROCEDURE AS FOUND IN THE CONSTRUCTION BUSINESS, AND MAY LIMIT
5 THE FIELD AND SCOPE OF THE OPERATIONS OF A LICENSED CONTRACTOR TO THOSE
6 IN WHICH THE CONTRACTOR IS CLASSIFIED AND QUALIFIED TO ENGAGE, AS
7 DEFINED IN SECTION SEVENTY-FIVE-E OF THIS ARTICLE.

8 2. A LICENSEE MAY MAKE APPLICATION FOR CLASSIFICATION AND BE CLASSI-
9 FIED IN MORE THAN ONE CLASSIFICATION IF THE LICENSEE MEETS THE QUALI-
10 FICATIONS PRESCRIBED BY THE BOARD FOR SUCH ADDITIONAL CLASSIFICATION OR
11 CLASSIFICATIONS. FOR QUALIFYING OR CLASSIFYING IN ADDITIONAL CLASSIFICA-
12 TIONS, THE LICENSEE SHALL PAY THE APPROPRIATE APPLICATION FEE BUT SHALL
13 NOT BE REQUIRED TO PAY ANY ADDITIONAL LICENSE FEE.

14 3. THIS SECTION SHALL NOT PROHIBIT A SPECIALTY CONTRACTOR FROM TAKING
15 AND EXECUTING A CONTRACT INVOLVING THE USE OF TWO OR MORE CRAFTS OR
16 TRADES, IF THE PERFORMANCE OF THE WORK IN THE CRAFTS OR TRADES, OTHER
17 THAN IN WHICH THE SPECIALTY CONTRACTOR IS LICENSED, IS INCIDENTAL AND
18 SUPPLEMENTAL TO THE PERFORMANCE OF WORK IN THE CRAFT FOR WHICH THE
19 SPECIALTY CONTRACTOR IS LICENSED.

20 S 75-G. LICENSES REQUIRED. NO PERSON WITHIN THE PURVIEW OF THIS ARTI-
21 CLE SHALL ACT, OR ASSUME TO ACT, OR ADVERTISE, AS GENERAL ENGINEERING
22 CONTRACTOR, GENERAL BUILDING CONTRACTOR, OR SPECIALTY CONTRACTOR WITHOUT
23 A LICENSE PREVIOUSLY OBTAINED UNDER AND IN COMPLIANCE WITH THIS ARTICLE
24 AND THE RULES AND REGULATIONS OF THE CONTRACTORS LICENSE BOARD.

25 S 75-H. ISSUANCE OF BUILDING PERMITS; OWNER-BUILDER REGISTRATION. 1.
26 WHEN APPLYING FOR A PERMIT FROM THE OFFICE EACH APPLICANT SHALL FILE A
27 STATEMENT THAT THE APPLICANT AND ALL SPECIALTY CONTRACTORS ARE LICENSED
28 UNDER THIS ARTICLE, GIVING THE LICENSE NUMBERS AND STATING THAT THE
29 LICENSES ARE IN FULL FORCE AND EFFECT, OR, IF THE APPLICANT IS EXEMPT
30 FROM THIS ARTICLE, THE BASIS FOR THE CLAIMED EXEMPTION; PROVIDED THAT IF
31 THE APPLICANT CLAIMS AN EXEMPTION UNDER SUBDIVISION SEVEN OF SECTION
32 SEVENTY-FIVE-B OF THIS ARTICLE, THE APPLICANT SHALL ALSO BE REQUIRED TO
33 CERTIFY THAT THE BUILDING OR STRUCTURE IS FOR THE APPLICANT'S PERSONAL
34 USE AND NOT FOR USE OR OCCUPANCY BY THE GENERAL PUBLIC. THE CITY SHALL
35 MAINTAIN AN OWNER-BUILDER REGISTRATION LIST WHICH SHALL CONTAIN THE
36 FOLLOWING INFORMATION: (A) THE NAME OF ANY OWNER OR LESSEE WHO CLAIMS AN
37 EXEMPTION FROM THIS ARTICLE AS PROVIDED IN SUBDIVISION SEVEN OF SECTION
38 SEVENTY-FIVE-B OF THIS ARTICLE; (B) THE ADDRESS OF THE PROPERTY WHERE
39 EXEMPT BUILDING OR IMPROVEMENT ACTIVITY IS TO OCCUR; (C) A DESCRIPTION
40 OF THE TYPE OF BUILDING OR IMPROVEMENT ACTIVITY TO OCCUR; (D) THE
41 APPROXIMATE DATES OF CONSTRUCTION ACTIVITY; AND (E) WHETHER ANY ELEC-
42 TRICAL OR PLUMBING WORK IS TO BE PERFORMED AND IF SO, THE NAME AND
43 LICENSE NUMBER OF THE PERSON OR ENTITY WHO WILL DO THE WORK. THE ABSENCE
44 OF SUCH REGISTRATION IS PRIMA FACIE EVIDENCE THAT THE EXEMPTION IN
45 SUBDIVISION SEVEN OF SECTION SEVENTY-FIVE-B OF THIS ARTICLE DOES NOT
46 APPLY.

47 2. THE CITY SHALL VERIFY THE LICENSE AGAINST A LIST OF LICENSED
48 CONTRACTORS PROVIDED BY THE STATE CONTRACTORS LICENSING BOARD, WHICH
49 LIST SHALL BE UPDATED AT LEAST QUARTERLY. THE CITY SHALL ALSO VERIFY
50 THAT THE APPLICANT IS IN FACT THE CONTRACTOR SO LICENSED OR THE CONTRAC-
51 TOR'S DULY AUTHORIZED AGENT.

52 3. TO QUALIFY FOR THE EXEMPTION UNDER SUBDIVISION SEVEN OF SECTION
53 SEVENTY-FIVE-B OF THIS ARTICLE, THE CITY SHALL PROVIDE THE APPLICANT
54 WITH A DISCLOSURE STATEMENT IN SUBSTANTIALLY THE FOLLOWING FORM:

"DISCLOSURE STATEMENT

1 STATE LAW REQUIRES CONSTRUCTION TO BE DONE BY LICENSED CONTRACTORS. YOU
2 HAVE APPLIED FOR A PERMIT UNDER AN EXEMPTION TO THAT LAW. THE EXEMPTION
3 PROVIDED IN THE GENERAL CITY LAW S75-B(7), ALLOWS YOU, AS THE OWNER OR
4 LESSEE OF YOUR PROPERTY, TO ACT AS YOUR OWN GENERAL CONTRACTOR EVEN
5 THOUGH YOU DO NOT HAVE A LICENSE. YOU MUST SUPERVISE THE CONSTRUCTION
6 YOURSELF. YOU MUST ALSO HIRE LICENSED SUBCONTRACTORS. THE BUILDING MUST
7 BE FOR YOUR OWN USE AND OCCUPANCY. IT MAY NOT BE BUILT FOR SALE OR
8 LEASE. IF YOU SELL OR LEASE A BUILDING YOU HAVE BUILT YOURSELF WITHIN
9 ONE YEAR AFTER THE CONSTRUCTION IS COMPLETE, THE LAW WILL PRESUME THAT
10 YOU BUILT IT FOR SALE OR LEASE, WHICH IS A VIOLATION OF THE EXEMPTION,
11 AND YOU MAY BE PROSECUTED FOR THIS. IT IS YOUR RESPONSIBILITY TO MAKE
12 SURE THAT SUBCONTRACTORS HIRED BY YOU HAVE LICENSES REQUIRED BY STATE
13 LAW AND BY COUNTY LICENSING ORDINANCES. ELECTRICAL OR PLUMBING WORK MUST
14 BE PERFORMED BY CONTRACTORS LICENSED UNDER THE LAWS OF THE STATE OF NEW
15 YORK. ANY PERSON WORKING ON YOUR BUILDING WHO IS NOT LICENSED MUST BE
16 YOUR EMPLOYEE WHICH MEANS THAT YOU MUST DEDUCT F.I.C.A. AND WITHHOLDING
17 TAXES AND PROVIDE WORKERS' COMPENSATION FOR THAT EMPLOYEE, ALL AS
18 PRESCRIBED BY LAW. YOUR CONSTRUCTION MUST COMPLY WITH ALL APPLICABLE
19 LAWS, ORDINANCES, BUILDING CODES, AND ZONING REGULATIONS. IF YOU VIOLATE
20 GENERAL CITY LAW S75-B(7) YOU MAY BE FINED \$5,000 OR FORTY PERCENT OF
21 THE APPRAISED VALUE OF THE BUILDING AS DETERMINED BY THE ASSESSMENT AND
22 TAXATION DEPARTMENT OF THE CITY OF BUFFALO, WHICHEVER IS GREATER, FOR
23 THE FIRST OFFENSE; AND \$10,000 OR FIFTY PERCENT OF THE APPRAISED VALUE
24 OF THE BUILDING AS DETERMINED BY THE ASSESSMENT AND TAXATION DEPARTMENT
25 OF THE CITY OF BUFFALO, WHICHEVER IS GREATER FOR ANY SUBSEQUENT
26 OFFENSE."

27 THE CITY SHALL NOT ISSUE A BUILDING PERMIT TO THE OWNER-APPLICANT UNTIL
28 THE APPLICANT SIGNS A STATEMENT THAT THE APPLICANT HAS READ AND UNDER-
29 STANDS THE DISCLOSURE FORM.

30 4. A CITY BUILDING INSPECTOR OR OTHER BUILDING OFFICIAL SHALL REPORT
31 TO THE OFFICE THE NAME AND ADDRESS OF ANY PERSON, WHO, IN THE OPINION OF
32 THE BUILDING INSPECTOR OR OFFICIAL, HAS VIOLATED THIS ARTICLE BY ACCEPT-
33 ING OR CONTRACTING TO ACCOMPLISH WORK WHICH WOULD CLASSIFY THE PERSON AS
34 A CONTRACTOR UNDER THIS ARTICLE.

35 S 75-I. ADVERTISING. 1. IT IS A MISDEMEANOR FOR ANY PERSON, INCLUDING
36 A PERSON WHO IS EXEMPT BY SECTION SEVENTY-FIVE-B OF THIS ARTICLE, TO
37 ADVERTISE WITH OR WITHOUT ANY LIMITING QUALIFICATIONS AS A CONTRACTOR
38 UNLESS SUCH PERSON HOLDS A VALID LICENSE UNDER THIS ARTICLE FOR THE
39 GOODS AND SERVICES ADVERTISED. "ADVERTISE" AS USED IN THIS SECTION
40 INCLUDES, BUT IS NOT LIMITED TO, THE ISSUANCE OF ANY CARD, SIGN, OR
41 DEVICE TO ANY PERSON; THE CAUSING, PERMITTING, OR ALLOWING OF ANY SIGN
42 OR MARKING ON OR IN ANY BUILDING, VEHICLE OR STRUCTURE; OR ADVERTISING
43 IN ANY NEWSPAPER OR MAGAZINE; ANY LISTING OR ADVERTISING IN ANY DIRECTO-
44 RY UNDER A CLASSIFICATION OR HEADING THAT INCLUDES THE WORD "CONTRAC-
45 TOR"; OR COMMERCIALS BROADCAST BY AIRWAVE TRANSMISSION.

46 2. A CONTRACTOR MAY ADVERTISE IN PRINT OR BROADCAST MEDIUM, AS DEFINED
47 IN SUBDIVISION ONE OF THIS SECTION ONLY IF THE CONTRACTOR INCLUDES IN
48 THE ADVERTISEMENT OR LISTING THE CONTRACTOR'S APPLICABLE AND CURRENT
49 LICENSE NUMBER, AND PROVIDES PROOF OF THE NUMBER'S VALIDITY TO THE
50 PUBLISHER OR PRODUCER OF THE ADVERTISING MEDIUM. THE PUBLISHER OR
51 PRODUCER OF A PRINT OR BROADCAST ADVERTISING MEDIUM SHALL REFUSE TO
52 PUBLISH OR BROADCAST AN ADVERTISEMENT OR LISTING FOR A CONTRACTOR WHO
53 DOES NOT COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION. A PUBLISHER OR
54 PRODUCER WHO OBTAINS A SIGNED STATEMENT FROM THE CONTRACTOR WHICH STATES
55 THAT THE CONTRACTOR HAS READ THE TEXT OF THE ADVERTISEMENT OR LISTING,
56 HAS AN APPLICABLE AND CURRENT CONTRACTORS LICENSE FOR THE GOODS AND

SERVICES ADVERTISED, HAS INCLUDED ALL APPLICABLE AND CURRENT LICENSE NUMBERS IN THE ADVERTISEMENT OR LISTING, AND IS AWARE OF CIVIL AND CRIMINAL PENALTIES FOR ADVERTISING AS A CONTRACTOR WITHOUT A VALID LICENSE, SHALL BE ENTITLED TO A REBUTTABLE PRESUMPTION OF COMPLIANCE WITH THIS SUBDIVISION.

3. UPON ENTRY OF EITHER A FINAL ORDER OF THE CONTRACTORS LICENSE BOARD OR A JUDGMENT BY A COURT OF COMPETENT JURISDICTION FINDING THAT A CONTRACTOR HAS ADVERTISED IN VIOLATION OF EITHER SECTION SEVENTY-FIVE-G OF THIS ARTICLE OR SUBDIVISION ONE OF THIS SECTION, THE PUBLIC UTILITY FURNISHING TELEPHONE SERVICE TO THE CONTRACTOR SHALL DISCONNECT THE TELEPHONE NUMBER CONTAINED IN THE ADVERTISEMENT OR LISTING.

4. THE PUBLISHER OR PRODUCER OF A PRINT OR BROADCAST ADVERTISING MEDIUM SHALL NOT BE LIABLE IN ANY SUIT, ACTION, OR CLAIM ARISING FROM ITS REFUSAL TO LIST OR ACCEPT ADVERTISEMENTS PURSUANT TO SUBDIVISION TWO OF THIS SECTION. GOOD FAITH COMPLIANCE BY A PUBLIC UTILITY WITH SUBDIVISION THREE OF THIS SECTION IS A COMPLETE DEFENSE TO ANY CIVIL OR CRIMINAL ACTION BROUGHT AGAINST IT ARISING FROM THE TERMINATION OF TELEPHONE SERVICE.

S 75-J. AIDING OR ABETTING. AIDING OR ABETTING AN UNLICENSED PERSON TO EVADE THIS ARTICLE OR KNOWINGLY COMBINING OR CONSPIRING WITH AN UNLICENSED PERSON, OR ALLOWING ONE'S LICENSE TO BE USED BY AN UNLICENSED PERSON, OR ACTING AS AGENT OR PARTNER OR ASSOCIATE, OR OTHERWISE, OF AN UNLICENSED PERSON, WITH THE INTENT TO EVADE THIS ARTICLE, SHALL BE A MISDEMEANOR.

S 75-K. INVESTIGATION PERMITTED. THE CONTRACTORS LICENSE BOARD MAY INVESTIGATE, CLASSIFY, AND QUALIFY APPLICANTS FOR CONTRACTORS LICENSES.

S 75-L. VIOLATION FOR UNLICENSED ACTIVITY. 1. IN ADDITION TO ANY OTHER REMEDY AVAILABLE, THE INSPECTOR MAY ISSUE VIOLATION NOTICES TO PERSONS ACTING IN THE CAPACITY OF OR ENGAGING IN THE BUSINESS OF A CONTRACTOR WITHIN THE CITY, WITHOUT HAVING A LICENSE PREVIOUSLY OBTAINED UNDER AND IN COMPLIANCE WITH THIS ARTICLE AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER. IF THE INSPECTOR DETERMINES THAT A PERSON IS ACTING IN THE CAPACITY OF, OR ENGAGING IN THE BUSINESS OF, A CONTRACTOR WITHIN THIS CITY WITHOUT HAVING A LICENSE TO SO ACT OR ENGAGE, THE INSPECTOR MAY ISSUE A VIOLATION NOTICE TO SUCH PERSON.

2. EACH VIOLATION NOTICE SHALL BE IN WRITING AND SHALL DESCRIBE THE BASIS OF THE VIOLATION, INCLUDING THE SPECIFIC STATUTORY PROVISIONS ALLEGED TO HAVE BEEN VIOLATED, AND SHALL CONTAIN AN ORDER TO CEASE AND DESIST FROM THE VIOLATION, AND AN ASSESSMENT OF CIVIL PENALTIES AS PROVIDED IN SECTION SEVENTY-FIVE-Z OF THIS ARTICLE. THE VIOLATION NOTICE SHALL ALSO INCLUDE NOTICE OF THE SANCTIONS FOR VIOLATING THE CEASE AND DESIST ORDER.

3. SERVICE OF A VIOLATION NOTICE ISSUED UNDER THIS SECTION SHALL BE MADE BY PERSONAL SERVICE WHENEVER POSSIBLE, OR BY CERTIFIED MAIL, RESTRICTED DELIVERY, SENT TO THE LAST KNOWN BUSINESS OR RESIDENCE ADDRESS OF THE PERSON CITED.

4. ANY PERSON SERVED WITH A VIOLATION NOTICE UNDER THIS SECTION MAY SUBMIT A WRITTEN REQUEST TO THE EXECUTIVE DIRECTOR FOR A HEARING, WITHIN TWENTY DAYS FROM THE RECEIPT OF THE VIOLATION NOTICE, WITH RESPECT TO THE VIOLATIONS ALLEGED, THE SCOPE OF THE ORDER TO CEASE AND DESIST, AND THE AMOUNT OF THE CIVIL PENALTIES ASSESSED.

5. IF THE PERSON CITED UNDER THIS SECTION TIMELY NOTIFIES THE EXECUTIVE DIRECTOR OF THE REQUEST FOR A HEARING, THE EXECUTIVE DIRECTOR SHALL AFFORD AN OPPORTUNITY FOR A HEARING AT THE CONTRACTORS LICENSING BOARD. THE HEARING SHALL BE CONDUCTED BY THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR MAY DESIGNATE A HEARINGS OFFICER TO HOLD THE HEARING. THE

1 EXECUTIVE DIRECTOR OR ANY HEARINGS OFFICER DESIGNATED BY THE EXECUTIVE
2 DIRECTOR SHALL HAVE THE POWER TO ISSUE SUBPOENAS, ADMINISTER OATHS, HEAR
3 TESTIMONY, FIND FACTS, AND MAKE CONCLUSIONS OF LAW AND ISSUE A FINAL
4 ORDER.

5 6. IF THE PERSON CITED UNDER THIS SECTION DOES NOT SUBMIT A WRITTEN
6 REQUEST TO THE EXECUTIVE DIRECTOR FOR A HEARING WITHIN TWENTY DAYS FROM
7 THE RECEIPT OF THE VIOLATION NOTICE, THE VIOLATION NOTICE SHALL BE
8 DEEMED A FINAL ORDER OF THE EXECUTIVE DIRECTOR.

9 7. THE EXECUTIVE DIRECTOR MAY APPLY TO THE APPROPRIATE COURT FOR A
10 JUDGMENT TO ENFORCE THE PROVISIONS OF ANY FINAL ORDER ISSUED BY THE
11 EXECUTIVE DIRECTOR OR DESIGNATED HEARINGS OFFICER PURSUANT TO THIS
12 SECTION, INCLUDING THE PROVISIONS TO CEASE AND DESIST AND FOR CIVIL
13 PENALTIES IMPOSED. IN ANY PROCEEDING TO ENFORCE THE PROVISIONS OF THE
14 FINAL ORDER OF THE EXECUTIVE DIRECTOR OR DESIGNATED HEARINGS OFFICER,
15 THE EXECUTIVE DIRECTOR NEED ONLY SHOW THAT NOTICE WAS GIVEN, A HEARING
16 WAS HELD OR THE TIME GRANTED FOR REQUESTING A HEARING HAS RUN WITHOUT
17 SUCH A REQUEST, AND A CERTIFIED COPY OF THE FINAL ORDER OF THE EXECUTIVE
18 DIRECTOR OR DESIGNATED HEARINGS OFFICER.

19 8. IF ANY PARTY IS AGGRIEVED BY THE DECISION OF THE EXECUTIVE DIRECTOR
20 OR THE DESIGNATED HEARINGS OFFICER, THE PARTY MAY COMMENCE A PROCEEDING
21 PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES;
22 PROVIDED THAT THE OPERATION OF A CEASE AND DESIST ORDER SHALL NOT BE
23 STAYED PENDING SUCH PROCEEDING.

24 9. THE SANCTIONS AND DISPOSITION AUTHORIZED UNDER THIS SECTION SHALL
25 BE SEPARATE FROM AND IN ADDITION TO ALL OTHER REMEDIES EITHER CIVIL OR
26 CRIMINAL PROVIDED IN ANY OTHER APPLICABLE STATUTORY PROVISION. THE EXEC-
27 UTIVE DIRECTOR MAY ADOPT RULES AND REGULATIONS AS MAY BE NECESSARY TO
28 FULLY EFFECTUATE THIS SECTION.

29 10. THE EXECUTIVE DIRECTOR MAY APPLY TO THE APPROPRIATE COURT FOR
30 INJUNCTIVE OR ANY OTHER RELIEF THE COURT DEEMS APPROPRIATE, INCLUDING A
31 FINE OF NOT LESS THAN TEN THOUSAND DOLLARS FOR EACH OFFENSE, AGAINST ANY
32 PERSON WHO VIOLATES A CEASE AND DESIST ORDER. EACH DAY'S VIOLATION OR
33 FAILURE TO COMPLY WITH A CEASE AND DESIST ORDER SHALL BE DEEMED A SEPA-
34 RATE OFFENSE. THE ALLEGATIONS IN THE CITATION SHALL BE DEEMED CONCLU-
35 SIVELY ESTABLISHED FOR PURPOSES OF A PROCEEDING FOR PERMANENT OR TEMPO-
36 RARY RELIEF TO ENFORCE THE CEASE AND DESIST ORDER.

37 S 75-M. STATE DISASTER EMERGENCY; ACTING AS A CONTRACTOR WITHOUT A
38 LICENSE; PENALTY. ANY PERSON WHO VIOLATES SECTION SEVENTY-FIVE-G OF THIS
39 ARTICLE, IN CONNECTION WITH THE OFFER OR PERFORMANCE OF REPAIRS TO A
40 RESIDENTIAL OR NONRESIDENTIAL STRUCTURE FOR DAMAGE CAUSED BY A NATURAL
41 DISASTER IN A POLITICAL SUBDIVISION FOR WHICH A STATE DISASTER EMERGENCY
42 IS DECLARED BY THE GOVERNOR, MAY BE PUNISHED BY A FINE OF UP TO TEN
43 THOUSAND DOLLARS, OR IMPRISONMENT UP TO ONE YEAR, OR BOTH, IN ADDITION
44 TO ALL OTHER REMEDIES OR PENALTIES.

45 S 75-N. ENHANCED PENALTIES WHEN ELDERLY PERSONS ARE TARGETED. IF ANY
46 PERSON IS FOUND TO HAVE VIOLATED SECTION SEVENTY-FIVE-G OF THIS ARTICLE
47 AND THE VIOLATION IS COMMITTED AGAINST AN ELDERLY PERSON, IN ADDITION TO
48 ANY OTHER PENALTY SET FORTH OR IMPOSED, THE COURT MAY IMPOSE A FINE OF
49 UP TO TEN THOUSAND DOLLARS, OR IMPRISONMENT UP TO ONE YEAR, OR BOTH. AS
50 USED IN THIS SECTION, "ELDERLY PERSON" MEANS A PERSON WHO IS SIXTY-FIVE
51 YEARS OF AGE OR OLDER.

52 S 75-O. NO LICENSE ISSUED WHEN. 1. NO LICENSE AUTHORIZED BY THIS ARTI-
53 CLE SHALL BE ISSUED TO:

54 (A) ANY PERSON UNLESS THE PERSON HAS FILED AN APPLICATION AND PAID THE
55 APPLICABLE FEES;

1 (B) ANY PERSON UNLESS THE PERSON MEETS THE EXPERIENCE REQUIREMENTS AS
2 PRESCRIBED IN THE BOARD'S RULES; PROVIDED THAT THE BOARD MAY ACCEPT
3 EXPERIENCE ACQUIRED ON A SELF-EMPLOYED OR UNLICENSED BASIS IF THE EXPE-
4 RIENCE CAN BE VERIFIED;

5 (C) ANY PERSON WHO DOES NOT POSSESS A HISTORY OF HONESTY, TRUTHFUL-
6 NESS, FINANCIAL INTEGRITY, AND FAIR DEALING; PROVIDED THAT ANY PERSON
7 WHO DURING THE SIX YEARS PRIOR TO APPLICATION HAS FAILED TO SATISFY AN
8 UNDISPUTED DEBT OR A JUDGMENT RELATING TO SERVICES OR MATERIALS RENDERED
9 IN CONNECTION WITH OPERATIONS AS A CONTRACTOR SHALL BE PRESUMED NOT TO
10 POSSESS A HISTORY OF FINANCIAL INTEGRITY;

11 (D) ANY PERSON UNLESS THE PERSON HAS SUCCESSFULLY PASSED A WRITTEN
12 EXAMINATION AS PRESCRIBED BY THE BOARD;

13 (E) ANY PERSON UNLESS THE PERSON IS AGE EIGHTEEN YEARS OR MORE;

14 (F) ANY JOINT VENTURE WHICH IS NOT EXEMPT UNDER SUBDIVISION EIGHT OF
15 SECTION SEVENTY-FIVE-B OF THIS ARTICLE UNLESS THE CONTRACTING BUSINESS
16 THEREOF IS UNDER THE DIRECT MANAGEMENT OF A MEMBER OR EMPLOYEE THEREOF,
17 AND UNLESS THE MEMBER OR EMPLOYEE HOLDS AN APPROPRIATE LICENSE;

18 (G) ANY INDIVIDUAL WHO IS UNABLE TO QUALIFY AS A CONTRACTOR OR ANY
19 PARTNERSHIP OR CORPORATION, UNLESS THE CONTRACTING BUSINESS OF THE INDIV-
20 IDUAL, PARTNERSHIP, OR CORPORATION IS UNDER THE DIRECT MANAGEMENT OF AN
21 EMPLOYEE, PARTNER, OR OFFICER THEREOF WHO HOLDS AN APPROPRIATE LICENSE;

22 (H) ANY PERSON UNLESS THE PERSON SUBMITS SATISFACTORY PROOF TO THE
23 BOARD THAT THE PERSON HAS OBTAINED WORKERS' COMPENSATION INSURANCE;

24 (I) ANY PERSON UNLESS THE PERSON SUBMITS SATISFACTORY PROOF TO THE
25 BOARD THAT THE PERSON HAS OBTAINED LIABILITY INSURANCE; OR

26 (J) ANY PERSON UNLESS THE PERSON SUBMITS A BOND IF REQUIRED BY THE
27 BOARD UNDER SECTION SEVENTY-FIVE-V OF THIS ARTICLE.

28 2. ANY LICENSE ISSUED HEREUNDER SHALL NOT BE RENEWED IF THE LICENSEE
29 NO LONGER MEETS ANY OF THE FOREGOING QUALIFICATIONS.

30 3. AN APPLICATION SHALL BE CONSIDERED ABANDONED IF THE APPLICATION IS
31 NOT COMPLETED AND THE REQUIRED DOCUMENTS OR OTHER INFORMATION ARE NOT
32 SUBMITTED TO THE BOARD WITHIN TWO YEARS FROM THE LAST DATE THE DOCUMENTS
33 OR INFORMATION WERE REQUESTED.

34 S 75-P. REQUIREMENTS TO MAINTAIN LICENSE. 1. A LICENSED CONTRACTOR
35 SHALL HAVE AND MAINTAIN IN FULL FORCE AND EFFECT THE FOLLOWING:

36 (A) WORKERS' COMPENSATION INSURANCE;

37 (B) LIABILITY INSURANCE FROM AN INSURANCE COMPANY OR AGENCY FOR
38 COMPREHENSIVE PERSONAL INJURY AND PROPERTY DAMAGE LIABILITY; AND

39 (C) BOND WHEN REQUIRED BY THE BOARD, UNDER SECTION SEVENTY-FIVE-V OF
40 THIS ARTICLE.

41 2. FAILURE, REFUSAL, OR NEGLECT OF ANY LICENSED CONTRACTOR TO MAINTAIN
42 IN FULL FORCE AND EFFECT, THE APPLICABLE WORKERS' COMPENSATION INSUR-
43 ANCE, LIABILITY INSURANCE, OR BOND SHALL CAUSE THE AUTOMATIC FORFEITURE
44 OF THE LICENSE OF THE CONTRACTOR EFFECTIVE AS OF THE DATE OF EXPIRATION
45 OR CANCELLATION OF THE CONTRACTOR'S WORKERS' COMPENSATION INSURANCE,
46 LIABILITY INSURANCE, OR BOND.

47 3. THE BOARD SHALL NOT RESTORE THE FORFEITED LICENSE UNTIL SATISFAC-
48 TORY PROOF OF CONTINUOUS INSURANCE AND BOND COVERAGE ARE SUBMITTED TO
49 THE BOARD AS REQUIRED BY THIS SECTION.

50 4. FAILURE TO RESTORE A LICENSE WITHIN SIXTY DAYS AFTER THE DATE OF
51 FORFEITURE SHALL RESULT IN THE FORFEITURE OF ALL FEES AND SHALL REQUIRE
52 THE PERSON TO APPLY AS A NEW APPLICANT.

53 5. THE BOARD MAY ASSESS A FEE NOT TO EXCEED ONE THOUSAND DOLLARS,
54 IMPOSE A BOND, OR RESTRICT THE LICENSE AS A CONDITION FOR THE RESTORA-
55 TION OF A LICENSE FORFEITED PURSUANT TO THIS SECTION.

6. A LICENSEE MAY, WITHIN SIXTY DAYS AFTER RECEIPT OF THE NOTIFICATION OF THE FORFEITURE, REQUEST AN ADMINISTRATIVE HEARING TO REVIEW THE FORFEITURE.

S 75-Q. APPLICATION; FEES. 1. EVERY APPLICANT FOR A LICENSE UNDER THIS ARTICLE SHALL COMPLETE AND FILE AN APPLICATION PROVIDED BY THE BOARD AND SHALL FURNISH ANY ADDITIONAL INFORMATION BEARING UPON THE ISSUANCE OF THE LICENSE AS THE BOARD SHALL REQUIRE. IN THE CASE OF A PARTNERSHIP, JOINT VENTURE, OR CORPORATION, ANY PARTNER, MEMBER, OR OFFICER THEREOF MAY SIGN THE APPLICATION ON BEHALF OF THE APPLICANT.

2. EVERY APPLICANT WHO IS REQUIRED BY THE BOARD TO BE EXAMINED SHALL PAY, DIRECTLY TO THE TESTING AGENCY, AN EXAMINATION FEE.

3. SUCH FEES SHALL BE AS PROVIDED IN RULES AND REGULATIONS ADOPTED BY THE EXECUTIVE DIRECTOR.

S 75-R. FORM FOR LICENSES. THE FORM OF EVERY LICENSE SHALL BE PRESCRIBED BY THE BOARD AND SHALL BE ISSUED IN THE NAME OF THE BOARD.

S 75-S. PLACE OF BUSINESS AND POSTING OF LICENSE. 1. A LICENSED CONTRACTOR SHALL HAVE, MAINTAIN, AND OPERATE FROM A DEFINITE PLACE OF BUSINESS IN THE STATE AND SHALL DISPLAY THEREIN HIS OR HER CONTRACTOR'S LICENSE.

2. THE LICENSED CONTRACTOR SHALL REPORT ANY CHANGE OF ADDRESS OR TELEPHONE NUMBER TO THE BOARD WITHIN TEN BUSINESS DAYS FROM SUCH CHANGE.

S 75-T. FEES; BIENNIAL RENEWALS; INACTIVE LICENSE. 1. FEES REQUIRED BY THIS ARTICLE SHALL BE PAID TO THE BOARD ON OR BEFORE SEPTEMBER THIRTIETH OF EACH EVEN-NUMBERED YEAR. THESE FEES SHALL BE AS PROVIDED IN RULES AND REGULATIONS ADOPTED BY THE EXECUTIVE DIRECTOR. FAILURE, NEGLECT, OR REFUSAL OF ANY LICENSEE TO PAY THESE FEES AND TO SUBMIT ALL DOCUMENTS REQUIRED BY THE BOARD ON OR BEFORE SEPTEMBER THIRTIETH OF EACH EVEN-NUMBERED YEAR SHALL CONSTITUTE A FORFEITURE OF THE LICENSEE'S LICENSE.

2. ANY FORFEITED LICENSE MAY BE RESTORED UPON SUBMITTAL OF ALL REQUIRED DOCUMENTS AND FEES, PLUS A PENALTY FEE, WITHIN SIXTY DAYS FROM SEPTEMBER THIRTIETH OF THE EVEN-NUMBERED YEAR.

3. UPON WRITTEN REQUEST OF A LICENSEE, THE BOARD MAY PLACE THAT PERSON'S ACTIVE LICENSE IN AN INACTIVE STATUS. THE LICENSEE, UPON PAYMENT OF THE INACTIVE LICENSE FEE, MAY CONTINUE INACTIVE FOR THE BIENNIAL PERIOD. FAILURE, NEGLECT, OR REFUSAL OF ANY LICENSEE IN INACTIVE STATUS TO PAY THE INACTIVE LICENSE FEE SHALL CONSTITUTE A FORFEITURE OF THE LICENSE. THE LICENSE MAY BE REACTIVATED AT ANY TIME DURING THE BIENNIAL PERIOD BY MAKING WRITTEN REQUEST TO THE BOARD AND BY FULFILLING ALL THE REQUIREMENTS, INCLUDING THE PAYMENT OF THE APPROPRIATE FEES. WHILE IN AN INACTIVE STATUS, A LICENSEE SHALL NOT ENGAGE IN CONTRACTING; A LICENSEE WHO VIOLATES THIS PROHIBITION SHALL BE SUBJECT TO DISCIPLINE UNDER THIS ARTICLE AND THE BOARD'S RULES AND REGULATIONS.

4. FOR PURPOSES OF THIS ARTICLE, THE DISHONORING OF ANY CHECK UPON FIRST DEPOSIT SHALL CONSTITUTE A FAILURE TO MEET THE FEE REQUIREMENTS.

S 75-U. ACTION ON APPLICATIONS. WITHIN ONE HUNDRED TWENTY DAYS AFTER THE FILING OF A PROPER APPLICATION FOR A LICENSE AND THE PAYMENT OF THE REQUIRED FEES, THE BOARD SHALL:

1. CONDUCT AN INVESTIGATION OF THE APPLICANT, AND IN THAT INVESTIGATION MAY POST PERTINENT INFORMATION, INCLUDING BUT NOT LIMITED TO, THE NAME AND ADDRESS OF THE APPLICANT, AND IF THE APPLICANT IS ASSOCIATED IN ANY PARTNERSHIP, CORPORATION, OR OTHER ENTITY, THE NAMES, ADDRESSES, AND OFFICIAL CAPACITIES OF THE APPLICANT'S ASSOCIATES; AND

2. EITHER ISSUE A LICENSE TO THE APPLICANT OR NOTIFY THE APPLICANT IN WRITING BY REGISTERED MAIL OF THE BOARD'S DECISION NOT TO GRANT THE LICENSE AND SPECIFICALLY NOTIFY THE APPLICANT OF THE APPLICANT'S RIGHT

1 TO SUBMIT A REQUEST FOR A CONTESTED CASE HEARING WITHIN SIXTY DAYS OF
2 THE BOARD'S DECISION.

3 S 75-V. BOND. 1. THE CONTRACTORS LICENSE BOARD MAY REQUIRE EACH LICEN-
4 SEE, APPLICANT, INDIVIDUAL OR CORPORATION, WHO IS A SPECIALTY CONTRACTOR
5 TO PUT UP BOND IN THE SUM OF NOT LESS THAN FIVE THOUSAND DOLLARS
6 EXECUTED BY THE LICENSEE OR APPLICANT AS PRINCIPAL AND BY A SURETY
7 COMPANY AUTHORIZED TO DO BUSINESS IN THE STATE AS SURETY.

8 2. THE BOARD MAY REQUIRE EACH LICENSEE, APPLICANT, INDIVIDUAL OR
9 CORPORATION, WHO IS A GENERAL CONTRACTOR TO PUT UP A BOND IN THE SUM OF
10 NOT LESS THAN FIVE THOUSAND DOLLARS EXECUTED BY THE LICENSEE OR APPLI-
11 CANT AS PRINCIPAL AND BY A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN
12 THE STATE AS SURETY.

13 3. THE BOARD, IN EXERCISING ITS DISCRETION SHALL TAKE INTO CONSIDER-
14 ATION THE LICENSEE'S OR APPLICANT'S FINANCIAL CONDITION AND EXPERIENCE
15 IN THE FIELD.

16 4. THE BOND SHALL BE IN SUCH FORM AS THE BOARD MAY PRESCRIBE, CONDI-
17 TIONED UPON THE PAYMENT OF WAGES TO THE EMPLOYEES OF THE CONTRACTOR OR
18 ANY OTHER PERSON OR ENTITY ENTITLED TO SUCH WAGES WHEN DUE, AND GIVING
19 EMPLOYEES OR ANY OTHER PERSON OR ENTITY ENTITLED TO SUCH WAGES WHO HAVE
20 NOT BEEN PAID A RIGHT OF ACTION ON THE BOND IN THEIR OWN NAMES; AND UPON
21 THE HONEST CONDUCT OF THE BUSINESS OF THE LICENSEE, AND UPON THE RIGHT
22 OF ANY PERSON INJURED OR DAMAGED BY ANY WRONGFUL ACT OF THE LICENSEE TO
23 BRING AN ACTION ON THE BOND; PROVIDED THAT ANY CLAIM FOR WAGES SHALL
24 HAVE PRIORITY OVER ALL OTHER CLAIMS.

25 S 75-W. REVOCATION, SUSPENSION, AND RENEWAL OF LICENSES. IN ADDITION
26 TO ANY OTHER ACTIONS AUTHORIZED BY LAW, THE BOARD MAY REVOKE ANY LICENSE
27 ISSUED PURSUANT TO THIS ARTICLE, OR SUSPEND THE RIGHT OF A LICENSEE TO
28 USE A LICENSE, OR REFUSE TO RENEW A LICENSE FOR ANY CAUSE AUTHORIZED BY
29 LAW, INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

30 1. ANY DISHONEST, FRAUDULENT, OR DECEITFUL ACT AS A CONTRACTOR THAT
31 CAUSES SUBSTANTIAL DAMAGE TO ANOTHER;

32 2. ENGAGING IN ANY UNFAIR OR DECEPTIVE ACT OR PRACTICE PURSUANT TO
33 ARTICLE TWENTY-TWO-A OF THE GENERAL BUSINESS LAW;

34 3. ABANDONMENT OF ANY CONSTRUCTION PROJECT OR OPERATION WITHOUT
35 REASONABLE OR LEGAL EXCUSE;

36 4. WILFUL DIVERSION OF FUNDS OR PROPERTY RECEIVED FOR PROSECUTION OR
37 COMPLETION OF A SPECIFIC CONSTRUCTION PROJECT OR OPERATION, OR FOR A
38 SPECIFIED PURPOSE IN THE PROSECUTION OR COMPLETION OF ANY CONSTRUCTION
39 PROJECT OR OPERATION, AND THE USE THEREOF FOR ANY OTHER PURPOSE;

40 5. WILFUL DEPARTURE FROM, OR WILFUL DISREGARD OF PLANS OR SPECIFICA-
41 TIONS IN ANY MATERIAL RESPECT WITHOUT CONSENT OF THE OWNER OR THE
42 OWNER'S DULY AUTHORIZED REPRESENTATIVE, THAT IS PREJUDICIAL TO A PERSON
43 ENTITLED TO HAVE THE CONSTRUCTION PROJECT OR OPERATION COMPLETED IN
44 ACCORDANCE WITH THOSE PLANS AND SPECIFICATIONS;

45 6. WILFUL VIOLATION OF ANY LAW OF THE STATE, RELATING TO BUILDING,
46 INCLUDING ANY VIOLATION OF ANY APPLICABLE RULE OF THE DEPARTMENT OF
47 HEALTH, OR OF ANY APPLICABLE SAFETY OR LABOR LAW;

48 7. FAILURE TO MAKE AND KEEP RECORDS SHOWING ALL CONTRACTS, DOCUMENTS,
49 RECORDS, RECEIPTS, AND DISBURSEMENTS BY A LICENSEE OF ALL THE LICENSEE'S
50 TRANSACTIONS AS A CONTRACTOR FOR A PERIOD OF NOT LESS THAN THREE YEARS
51 AFTER COMPLETION OF ANY CONSTRUCTION PROJECT OR OPERATION TO WHICH THE
52 RECORDS REFER OR TO PERMIT INSPECTION OF THOSE RECORDS BY THE BOARD;

53 8. WHEN THE LICENSEE BEING A PARTNERSHIP OR A JOINT VENTURE PERMITS
54 ANY PARTNER, MEMBER, OR EMPLOYEE OF THE PARTNERSHIP OR JOINT VENTURE WHO
55 DOES NOT HOLD A LICENSE TO HAVE THE DIRECT MANAGEMENT OF THE CONTRACTING
56 BUSINESS THEREOF;

1 9. WHEN THE LICENSEE BEING A CORPORATION PERMITS ANY OFFICER OR
2 EMPLOYEE OF THE CORPORATION WHO DOES NOT HOLD A LICENSE TO HAVE THE
3 DIRECT MANAGEMENT OF THE CONTRACTING BUSINESS THEREOF;

4 10. MISREPRESENTATION OF A MATERIAL FACT BY AN APPLICANT IN OBTAINING
5 A LICENSE;

6 11. FAILURE OF A LICENSEE TO COMPLETE IN A MATERIAL RESPECT ANY
7 CONSTRUCTION PROJECT OR OPERATION FOR THE AGREED PRICE IF THE FAILURE IS
8 WITHOUT LEGAL EXCUSE;

9 12. WILFUL FAILURE IN ANY MATERIAL RESPECT TO COMPLY WITH THIS ARTICLE
10 OR THE RULES ADOPTED PURSUANT THERETO;

11 13. WILFUL FAILURE OR REFUSAL TO PROSECUTE A PROJECT OR OPERATION TO
12 COMPLETION WITH REASONABLE DILIGENCE;

13 14. WILFUL FAILURE TO PAY WHEN DUE A DEBT INCURRED FOR SERVICES OR
14 MATERIALS RENDERED OR PURCHASED IN CONNECTION WITH THE LICENSEE'S OPER-
15 ATIONS AS A CONTRACTOR WHEN THE LICENSEE HAS THE ABILITY TO PAY OR WHEN
16 THE LICENSEE HAS RECEIVED SUFFICIENT FUNDS THEREFOR AS PAYMENT FOR THE
17 PARTICULAR OPERATION FOR WHICH THE SERVICES OR MATERIALS WERE RENDERED
18 OR PURCHASED;

19 15. THE FALSE DENIAL OF ANY DEBT DUE OR THE VALIDITY OF THE CLAIM
20 THEREFOR WITH INTENT TO SECURE FOR A LICENSEE, THE LICENSEE'S EMPLOYER,
21 OR OTHER PERSON, ANY DISCOUNT OF THE DEBT OR WITH INTENT TO HINDER,
22 DELAY, OR DEFRAUD THE PERSON TO WHOM THE DEBT IS DUE;

23 16. FAILURE TO SECURE OR MAINTAIN WORKERS' COMPENSATION INSURANCE;

24 17. ENTERING INTO A CONTRACT WITH AN UNLICENSED CONTRACTOR INVOLVING
25 WORK OR ACTIVITY FOR THE PERFORMANCE OF WHICH LICENSING IS REQUIRED
26 UNDER THIS ARTICLE;

27 18. PERFORMING SERVICE ON A RESIDENTIAL OR COMMERCIAL AIR CONDITIONER,
28 UTILIZING CFCs, WITHOUT USING REFRIGERANT RECOVERY AND RECYCLING EQUIP-
29 MENT;

30 19. PERFORMING SERVICE ON ANY AIR CONDITIONER WITHOUT SUCCESSFUL
31 COMPLETION OF AN APPROPRIATE TRAINING COURSE IN THE RECOVERY AND RECYCL-
32 ING OF CFC AND HCFC REFRIGERANTS, WHICH INCLUDED INSTRUCTION IN THE
33 PROPER USE OF REFRIGERANT RECOVERY AND RECYCLING EQUIPMENT THAT IS
34 CERTIFIED BY UNDERWRITERS LABORATORIES, INCORPORATED;

35 20. FAILURE TO PAY DELINQUENT TAXES, INTEREST, AND PENALTIES THAT
36 RELATE TO THE BUSINESS OF CONTRACTING, OR TO COMPLY WITH THE TERMS OF A
37 CONDITIONAL PAYMENT PLAN WITH THE DEPARTMENT OF TAXATION FOR THE PAYMENT
38 OF SUCH DELINQUENT TAXES, INTEREST, AND PENALTIES.

39 S 75-X. DEATH OR DISSOCIATION. NO COPARTNERSHIP, JOINT VENTURE, OR
40 CORPORATION SHALL BE DEEMED TO HAVE VIOLATED ANY PROVISION OF THIS ARTI-
41 CLE BY ACTING OR ASSUMING TO ACT AS A CONTRACTOR AFTER THE DEATH OR
42 DISSOCIATION OF A LICENSEE WHO HAD THE DIRECT MANAGEMENT OF THE
43 CONTRACTING BUSINESS THEREOF PRIOR TO FINAL DISPOSITION BY THE CONTRAC-
44 TORS LICENSE BOARD OF AN APPLICATION FOR A LICENSE MADE WITHIN THIRTY
45 DAYS FROM THE DATE OF THE DEATH OR DISSOCIATION.

46 S 75-Y. CIVIL ACTION. THE FAILURE OF ANY PERSON TO COMPLY WITH ANY
47 PROVISION OF THIS ARTICLE SHALL PREVENT SUCH PERSON FROM RECOVERING FOR
48 WORK DONE, OR MATERIALS OR SUPPLIES FURNISHED, OR BOTH ON A CONTRACT OR
49 ON THE BASIS OF THE REASONABLE VALUE THEREOF, IN A CIVIL ACTION, IF SUCH
50 PERSON FAILED TO OBTAIN A LICENSE UNDER THIS ARTICLE PRIOR TO CONTRACT-
51 ING FOR SUCH WORK.

52 S 75-Z. VIOLATION; PENALTIES. 1. ANY LICENSEE WHO CONTRACTS OUTSIDE
53 THE APPROPRIATE SCOPE OF CLASSIFICATION FOR WHICH THE LICENSEE IS
54 LICENSED SHALL BE FINED FIVE HUNDRED DOLLARS FOR THE FIRST OFFENSE, ONE
55 THOUSAND DOLLARS FOR THE SECOND OFFENSE, AND NOT LESS THAN ONE THOUSAND

1 FIVE HUNDRED DOLLARS OR MORE THAN TWO THOUSAND DOLLARS FOR ANY SUBSE-
2 QUENT OFFENSE.

3 2. ANY LICENSEE WHO VIOLATES SECTION SEVENTY-FIVE-M OR SUBDIVISION
4 SEVENTEEN OF SECTION SEVENTY-FIVE-W OF THIS ARTICLE SHALL BE FINED UP TO
5 TWENTY-FIVE THOUSAND DOLLARS OR UP TO THE FULL AMOUNT OF THE CONTRACT
6 PRICE FOR EACH OFFENSE, WHICHEVER IS GREATER.

7 3. EXCEPT AS PROVIDED IN SUBDIVISIONS ONE, TWO, FOUR AND FIVE OF THIS
8 SECTION, ANY PERSON WHO VIOLATES OR FAILS TO COMPLY WITH THIS ARTICLE
9 SHALL BE FINED NOT LESS THAN ONE HUNDRED DOLLARS NOR MORE THAN FIVE
10 THOUSAND DOLLARS FOR EACH VIOLATION; PROVIDED THAT ANY PERSON WHO
11 VIOLATES SECTION SEVENTY-FIVE-G OF THIS ARTICLE SHALL BE FINED:

12 (A) FIVE HUNDRED DOLLARS OR FORTY PERCENT OF THE TOTAL CONTRACT PRICE,
13 WHICHEVER IS GREATER, FOR THE FIRST OFFENSE;

14 (B) ONE THOUSAND DOLLARS OR FORTY PERCENT OF THE TOTAL CONTRACT PRICE,
15 WHICHEVER IS GREATER, FOR THE SECOND OFFENSE; AND

16 (C) FIVE THOUSAND DOLLARS OR FORTY PERCENT OF THE TOTAL CONTRACT
17 PRICE, WHICHEVER IS GREATER, FOR ANY SUBSEQUENT OFFENSE, AND WHEN THE
18 PERSON IS OR WAS A DEFENDANT OR RESPONDENT IN A SEPARATE CITATION OR
19 LAWSUIT FILED WITH OR BY THE OFFICE, ALL TOOLS, IMPLEMENTS, DOCUMENTS,
20 MATERIALS, OR ANY OTHER PROPERTY USED BY THE PERSON IN ACTIVITIES
21 VIOLATING SECTION SEVENTY-FIVE-G OF THIS ARTICLE SHALL BE SUBJECT TO
22 FORFEITURE AS PROVIDED BY SECTION SEVENTY-SIX OF THIS ARTICLE AND SHALL
23 BE TURNED OVER TO THE OFFICE FOR DISPOSITION UNDER SUCH SECTION.

24 4. ANY LICENSEE WHO VIOLATES, OR WHOSE EMPLOYEE VIOLATES, SUBDIVISION
25 EIGHTEEN, NINETEEN OR TWENTY OF SECTION SEVENTY-FIVE-W OF THIS ARTICLE,
26 SHALL BE FINED SEVENTY-FIVE DOLLARS FOR THE FIRST OFFENSE, ONE HUNDRED
27 FIFTY DOLLARS FOR THE SECOND OFFENSE, AND NOT LESS THAN THREE HUNDRED
28 DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS FOR EACH SUBSEQUENT OFFENSE;
29 PROVIDED THAT EACH UNIT SERVICED IN VIOLATION OF SUBDIVISION EIGHTEEN OR
30 NINETEEN OF SECTION SEVENTY-FIVE-W OF THIS ARTICLE AND EACH INSTANCE OF
31 RELEASING CFCS IN VIOLATION OF SUBDIVISION TWENTY OF SECTION
32 SEVENTY-FIVE-W OF THIS ARTICLE SHALL CONSTITUTE A SEPARATE OFFENSE.

33 5. ANY PERSON WHO VIOLATES SUBDIVISION SEVEN OF SECTION
34 SEVENTY-FIVE-B, SHALL BE FINED:

35 (A) FIVE THOUSAND DOLLARS OR FORTY PERCENT OF THE APPRAISED VALUE OF
36 THE BUILDING AS DETERMINED BY THE ASSESSMENT AND TAXATION DEPARTMENT OF
37 THE CITY OF BUFFALO, WHICHEVER IS GREATER, FOR THE FIRST OFFENSE; AND

38 (B) TEN THOUSAND DOLLARS OR FIFTY PERCENT OF THE APPRAISED VALUE OF
39 THE BUILDING AS DETERMINED BY THE ASSESSMENT AND TAXATION DEPARTMENT OF
40 THE CITY OF BUFFALO, WHICHEVER IS GREATER, FOR ANY SUBSEQUENT OFFENSES.

41 S 76. FORFEITURE OF PROPERTY FOR UNLICENSED ACTIVITY. 1. IF AN INSPEC-
42 TOR FINDS THAT A PERSON HAS ACTED IN THE CAPACITY OF, OR ENGAGED IN THE
43 BUSINESS OF A CONTRACTOR WITHIN THIS STATE WITHOUT HAVING A CURRENT
44 LICENSE AS REQUIRED BY THIS ARTICLE TO SO ACT OR ENGAGE, AND THE PERSON
45 IS OR WAS A DEFENDANT OR RESPONDENT IN A SEPARATE VIOLATION NOTICE OR
46 LAWSUIT FILED WITH OR BY THE OFFICE, THE INVESTIGATOR MAY ISSUE A NOTICE
47 OF FORFEITURE OF PROPERTY USED BY THE PERSON IN THE UNLICENSED ACTIVITY,
48 AND THE PROPERTY THAT IS THE SUBJECT OF THE NOTICE OF FORFEITURE SHALL
49 BE TURNED OVER TO THE OFFICE FOR DISPOSITION IN ACCORDANCE WITH THIS
50 ARTICLE.

51 2. EACH NOTICE OF FORFEITURE SHALL BE IN WRITING AND SHALL DESCRIBE
52 THE TOOLS, IMPLEMENTS, DOCUMENTS, MATERIALS, OR ANY OTHER PROPERTY USED
53 BY ANY PERSON IN UNLICENSED ACTIVITY THAT VIOLATES SECTION
54 SEVENTY-FIVE-G OF THIS ARTICLE.

1 3. THE OFFICE SHALL MAKE GOOD FAITH EFFORTS TO LOCATE AND NOTIFY WITH-
2 IN A REASONABLE PERIOD OF TIME ALL OWNERS OR INTEREST-HOLDERS OF PROPER-
3 TY SUBJECT TO A NOTICE OF FORFEITURE.

4 4. SERVICE OF A NOTICE OF FORFEITURE ISSUED UNDER THIS SECTION SHALL
5 BE MADE:

6 (A) IF THE NAME AND CURRENT ADDRESS OF THE UNLICENSED PERSON, OWNER,
7 OR INTEREST-HOLDER IS KNOWN:

8 (I) BY PERSONAL SERVICE; OR

9 (II) BY MAILING A COPY OF THE NOTICE TO THE UNLICENSED PERSON, OWNER,
10 OR INTEREST-HOLDER BY CERTIFIED MAIL TO THE LAST ADDRESS ON RECORD WITH
11 A STATE AGENCY; OR

12 (B) IF THE ADDRESS OF THE UNLICENSED PERSON, OWNER, OR INTEREST-HOLDER
13 IS NOT KNOWN OR IS NOT ON RECORD WITH A STATE AGENCY, BY PUBLIC NOTICE.

14 5. AN UNLICENSED PERSON SERVED WITH A NOTICE OF FORFEITURE UNDER THIS
15 SECTION MAY SUBMIT A WRITTEN REQUEST TO THE EXECUTIVE DIRECTOR FOR A
16 HEARING:

17 (A) WITHIN TWENTY DAYS OF RECEIPT OF THE NOTICE OF FORFEITURE, IF THE
18 PERSON IS SERVED PERSONALLY OR BY MAIL; OR

19 (B) WITHIN TWENTY DAYS OF PUBLIC NOTICE OF FORFEITURE. IF A REQUEST
20 FOR A HEARING IS NOT TIMELY FILED WITH THE EXECUTIVE DIRECTOR, THE
21 NOTICE OF FORFEITURE SHALL BE DEEMED A FINAL ORDER OF THE EXECUTIVE
22 DIRECTOR.

23 6. AN OWNER OR INTEREST-HOLDER SERVED WITH A NOTICE OF FORFEITURE,
24 OTHER THAN THE UNLICENSED PERSON, MAY FILE A PETITION FOR REMISSION OF
25 FORFEITURE WITH THE OFFICE WITHIN TWENTY DAYS OF SERVICE BY PERSONAL
26 SERVICE OR MAIL, OR WITHIN TWENTY DAYS OF THE DATE OF PUBLIC NOTICE, IF
27 SERVICE IS BY PUBLIC NOTICE. THE PETITION SHALL BE SIGNED BY THE PETI-
28 TIONER AND SWORN ON OATH BEFORE A NOTARY PUBLIC AND SHALL CONTAIN THE
29 FOLLOWING:

30 (A) A REASONABLY COMPLETE DESCRIPTION OF THE PROPERTY SUBJECT TO
31 FORFEITURE; AND

32 (B) A STATEMENT OF THE INTEREST OF THE PETITIONER IN THE PROPERTY
33 SUBJECT TO FORFEITURE, WITH SUPPORTING DOCUMENTARY EVIDENCE.

34 7. IF A PETITION FOR REMISSION OF FORFEITURE IS NOT TIMELY FILED WITH
35 THE EXECUTIVE DIRECTOR, THE NOTICE OF FORFEITURE SHALL BE DEEMED A FINAL
36 ORDER OF THE EXECUTIVE DIRECTOR.

37 8. THE OFFICE SHALL REVIEW THE PETITION FOR REMISSION OF FORFEITURE
38 AND, IF REMISSION IS WARRANTED, RETURN THE PROPERTY SUBJECT TO FORFEI-
39 TURE TO THE PETITIONER WITHIN THIRTY DAYS OF RECEIPT OF THE PETITION. IF
40 THE OFFICE DETERMINES THAT REMISSION IS NOT WARRANTED, THE OFFICE SHALL
41 ISSUE A WRITTEN DECISION TO THE PETITIONER WITHIN THIRTY DAYS OF RECEIPT
42 OF THE PETITION.

43 9. A PETITIONER WHOSE PETITION FOR REMISSION HAS BEEN DENIED MAY FILE
44 WITH THE EXECUTIVE DIRECTOR A WRITTEN REQUEST FOR A HEARING AS PROVIDED
45 UNDER SUBDIVISIONS TEN AND ELEVEN OF THIS SECTION. THE WRITTEN REQUEST
46 SHALL BE FILED WITHIN TWENTY DAYS OF RECEIPT OF THE WRITTEN DECISION
47 DENYING THE PETITION FOR REMISSION. IF A REQUEST FOR HEARING IS NOT
48 TIMELY FILED WITH THE COMMISSIONER, THE NOTICE OF FORFEITURE SHALL BE
49 DEEMED A FINAL ORDER OF THE EXECUTIVE DIRECTOR.

50 10. HEARINGS SHALL BE CONDUCTED BY THE EXECUTIVE DIRECTOR OR A HEAR-
51 INGS OFFICER DESIGNATED BY THE EXECUTIVE DIRECTOR. THE EXECUTIVE DIREC-
52 TOR OR DESIGNATED HEARINGS OFFICER MAY ISSUE SUBPOENAS, ADMINISTER
53 OATHS, HEAR TESTIMONY, FIND FACTS, MAKE CONCLUSIONS OF LAW, AND ISSUE A
54 FINAL ORDER OF FORFEITURE. THE OFFICE SHALL HAVE THE BURDEN TO SHOW BY
55 CLEAR AND CONVINCING EVIDENCE THAT THE PROPERTY IS SUBJECT TO FORFEI-
56 TURE. IN DETERMINING WHETHER THE PROPERTY IS SUBJECT TO FORFEITURE, THE

EXECUTIVE DIRECTOR OR HEARINGS OFFICER SHALL CONSIDER EVIDENCE OF OWNER-SHIP, THE DESCRIPTION OF THE PROPERTY, AND ANY OTHER RELEVANT EVIDENCE.

11. ANY PERSON AGGRIEVED BY THE DECISION OF THE EXECUTIVE DIRECTOR OR DESIGNATED HEARINGS OFFICER MAY COMMENCE A PROCEEDING PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

12. THE EXECUTIVE DIRECTOR MAY FILE AN ACTION IN THE SUPREME COURT FOR A JUDGMENT TO ENFORCE ANY FINAL ORDER ISSUED BY THE EXECUTIVE DIRECTOR OR DESIGNATED HEARINGS OFFICER PURSUANT TO THIS SECTION. A JUDGMENT ENFORCING THE FINAL ORDER SHALL ISSUE UPON A SHOWING BY THE EXECUTIVE DIRECTOR EITHER THAT NOTICE WAS GIVEN AND A HEARING WAS HELD, OR, THAT THE TIME GRANTED FOR REQUESTING A HEARING HAS RUN WITHOUT THE TIMELY FILING OF A REQUEST.

13. THE OFFICE MAY DISPOSE OF ALL PROPERTY FORFEITED IN ACCORDANCE WITH THIS ARTICLE BY:

(A) TRANSFERRING PROPERTY TO ANY LOCAL OR STATE GOVERNMENT ENTITY, MUNICIPALITY, OR LAW ENFORCEMENT AGENCY WITHIN THE STATE;

(B) SELLING PROPERTY TO THE PUBLIC BY PUBLIC SALE; OR

(C) USING ANY OTHER MEANS OF DISPOSITION AUTHORIZED BY LAW.

14. FORFEITURE UNDER THIS SECTION SHALL BE SEPARATE FROM AND IN ADDITION TO ALL OTHER APPLICABLE REMEDIES, EITHER CIVIL OR CRIMINAL. THIS SECTION SHALL NOT APPLY TO THE VIOLATIONS SET FORTH IN SUBDIVISIONS ONE AND TWO OF SECTION SEVENTY-FIVE-Z OF THIS ARTICLE.

15. THE EXECUTIVE DIRECTOR MAY ADOPT RULES AND REGULATIONS AS NECESSARY TO FULLY EFFECTUATE THIS SECTION.

S 76-A. INJUNCTION. THE CONTRACTORS LICENSE BOARD MAY, IN ADDITION TO ANY OTHER REMEDIES AVAILABLE, APPLY TO A SUPREME COURT JUDGE FOR A PRELIMINARY OR PERMANENT INJUNCTION RESTRAINING ANY PERSON FROM ACTING, OR ASSUMING TO ACT, OR ADVERTISING, AS GENERAL ENGINEERING CONTRACTOR, GENERAL BUILDING CONTRACTOR, OR SPECIALTY CONTRACTOR, WITHOUT A LICENSE PREVIOUSLY OBTAINED UNDER AND IN COMPLIANCE WITH THIS ARTICLE AND THE RULES AND REGULATIONS OF THE BOARD, AND UPON HEARING AND FOR CAUSE SHOWN, THE JUDGE MAY GRANT THE PRELIMINARY OR PERMANENT INJUNCTION.

S 76-B. PAYMENT FOR GOODS AND SERVICES. 1. A CONTRACTOR SHALL PAY THE CONTRACTOR'S SUBCONTRACTOR FOR ANY GOODS AND SERVICES RENDERED WITHIN SIXTY DAYS AFTER RECEIPT OF A PROPER STATEMENT BY THE SUBCONTRACTOR THAT THE GOODS HAVE BEEN DELIVERED OR SERVICES HAVE BEEN PERFORMED. THE SUBCONTRACTOR SHALL BE ENTITLED TO RECEIVE INTEREST ON THE UNPAID PRINCIPAL AMOUNT AT THE RATE OF ONE PERCENT PER MONTH COMMENCING ON THE SIXTIETH DAY FOLLOWING RECEIPT OF THE STATEMENT BY THE CONTRACTOR, PROVIDED THAT THIS SECTION SHALL NOT APPLY IF THE DELAY IN PAYMENT IS DUE TO A BONA FIDE DISPUTE BETWEEN THE CONTRACTOR AND THE SUBCONTRACTOR CONCERNING THE GOODS AND SERVICES CONTRACTED FOR. IF THERE IS NO BONA FIDE DISPUTE BETWEEN THE SUBCONTRACTOR AND THE CONTRACTOR CONCERNING THE GOODS OR SERVICES CONTRACTED FOR, THE SUBCONTRACTOR SHALL BE ENTITLED TO PAYMENT FOR GOODS AND SERVICES UNDER THIS SECTION.

2. IF PAYMENT IS CONTINGENT UPON RECEIPT OF FUNDS HELD IN ESCROW OR TRUST, THE CONTRACTOR SHALL CLEARLY STATE THIS FACT IN THE CONTRACTOR'S SOLICITATION OF BIDS. IF THE SOLICITATION FOR BIDS CONTAINS THE STATEMENT THAT THE TIME OF PAYMENT IS CONTINGENT UPON THE RECEIPT OF FUNDS HELD IN ESCROW OR TRUST AND A CONTRACT IS AWARDED IN RESPONSE TO THE SOLICITATION, INTEREST WILL NOT BEGIN TO ACCRUE UPON ANY UNPAID BALANCE UNTIL THE SIXTIETH DAY FOLLOWING RECEIPT BY THE CONTRACTOR OF THE SUBCONTRACTOR'S STATEMENT OR THE THIRTIETH DAY FOLLOWING RECEIPT OF THE ESCROW OR TRUST FUNDS, WHICHEVER OCCURS LATER.

1 S 76-C. DISCLOSURE; CONTRACTS. 1. PRIOR TO ENTERING INTO A CONTRACT
2 WITH A HOMEOWNER INVOLVING HOME CONSTRUCTION AND PRIOR TO THE APPLICA-
3 TION FOR A BUILDING PERMIT, LICENSED CONTRACTORS SHALL:

4 (A) EXPLAIN VERBALLY IN DETAIL TO THE HOMEOWNER ALL LIEN RIGHTS OF ALL
5 PARTIES PERFORMING UNDER THE CONTRACT INCLUDING THE HOMEOWNER, THE
6 CONTRACTOR, ANY SUBCONTRACTOR OR ANY MATERIALMAN SUPPLYING COMMODITIES
7 OR LABOR ON THE PROJECT;

8 (B) EXPLAIN VERBALLY IN DETAIL THE HOMEOWNER'S OPTION TO DEMAND BOND-
9 ING ON THE PROJECT, HOW THE BOND WOULD PROTECT THE HOMEOWNER AND THE
10 APPROXIMATE EXPENSE OF THE BOND; AND

11 (C) DISCLOSE ALL INFORMATION PERTAINING TO THE CONTRACT AND ITS
12 PERFORMANCE AND ANY OTHER RELEVANT INFORMATION THAT THE BOARD MAY
13 REQUIRE BY RULE.

14 2. ALL LICENSED CONTRACTORS PERFORMING HOME CONSTRUCTION SHALL PROVIDE
15 A WRITTEN CONTRACT TO THE HOMEOWNER. THE WRITTEN CONTRACT SHALL:

16 (A) CONTAIN THE INFORMATION PROVIDED IN SUBDIVISION ONE OF THIS
17 SECTION AND ANY OTHER RELEVANT INFORMATION THAT THE BOARD MAY REQUIRE BY
18 RULE;

19 (B) CONTAIN NOTICE OF THE CONTRACTOR'S RIGHT TO RESOLVE ALLEGED
20 CONSTRUCTION DEFECTS PRIOR TO COMMENCING ANY LITIGATION;

21 (C) BE SIGNED BY THE CONTRACTOR AND THE HOMEOWNER; AND

22 (D) BE EXECUTED PRIOR TO THE PERFORMANCE OF ANY HOME CONSTRUCTION.

23 3. FOR THE PURPOSE OF THIS SECTION, "HOMEOWNER" MEANS THE OWNER OR
24 LESSEE OF RESIDENTIAL REAL PROPERTY, INCLUDING OWNERS OR LESSEES OF
25 CONDOMINIUM OR COOPERATIVE UNITS.

26 4. ANY VIOLATION OF THIS SECTION SHALL BE DEEMED AN UNFAIR OR DECEP-
27 TIVE PRACTICE AND SHALL BE SUBJECT TO PROVISIONS OF ARTICLE TWENTY-TWO-A
28 OF THE GENERAL BUSINESS LAW, AS WELL AS THE PROVISIONS OF THIS ARTICLE.

29 S 76-D. FALSE STATEMENT. IT SHALL CONSTITUTE A MISDEMEANOR FOR ANY
30 PERSON OR THE PERSON'S AGENT TO FILE WITH THE BOARD ANY NOTICE, STATE-
31 MENT, OR OTHER DOCUMENT REQUIRED UNDER THE PROVISIONS OF THIS ARTICLE,
32 WHICH IS FALSE OR UNTRUE OR CONTAINS ANY MATERIAL MISSTATEMENT OF FACT.

33 S 76-E. DISCIPLINARY ACTION AGAINST LICENSEE. NOTHING CONTAINED IN
34 THIS ARTICLE SHALL LIMIT THE AUTHORITY OF THE BOARD TO TAKE DISCIPLINARY
35 ACTION AGAINST ANY LICENSEE FOR A VIOLATION OF ANY OF THE PROVISIONS OF
36 THIS ARTICLE, OR OF THE RULES AND REGULATIONS OF THE CONTRACTORS LICENSE
37 BOARD; NOR SHALL THE REPAYMENT IN FULL OF ALL OBLIGATIONS TO THE
38 CONTRACTORS RECOVERY FUND BY ANY LICENSED CONTRACTOR NULLIFY OR MODIFY
39 THE EFFECT OF ANY OTHER DISCIPLINARY PROCEEDING BROUGHT PURSUANT TO THE
40 PROVISIONS OF THIS ARTICLE OR THE RULES AND REGULATIONS PROMULGATED
41 HEREUNDER.

42 S 76-F. APPLICABILITY TO CITIES WITH A POPULATION OF LESS THAN TWO
43 HUNDRED EIGHTY-NINE THOUSAND. ANY CITY WITHIN THE STATE IS HEREBY
44 AUTHORIZED TO REGULATE CONTRACTORS AS SET FORTH IN THIS ARTICLE,
45 PROVIDED THAT THE GOVERNING BOARD OF SUCH MUNICIPALITY, AFTER PUBLIC
46 HEARING, ADOPTS A LOCAL LAW PROVIDING THEREFOR.

47 S 2. This act shall take effect January 1, 2011.