

## Required Home Improvement Contract Provisions

Prepared by Jennifer A. Hemming, Assistant County Attorney, Erie County Department of Law  
September 20, 2023

### The Law

#### **New York General Business Law**

#### **Chapter 20. Of the Consolidated Laws**

#### **Article 36-a. Home Improvement Contracts, Sections 770-776**

### General Business Law §771-Contract Provisions

1. Every home improvement contract subject to the provisions of this article, and all amendments thereto, shall be evidenced by a writing and shall be signed by all the parties to the contract. The writing shall contain the following:

(a) The name, address, telephone number and license number, if applicable, of the contractor.

(b) The approximate dates, or estimated dates, when the work will begin and be substantially completed, including a statement of any contingencies that would materially change the approximate or estimated completion date. In addition to the estimated or approximate dates, the contract shall also specify whether or not the contractor and the owner have determined a definite completion date to be of the essence.

(c) A description of the work to be performed, the materials to be provided to the owner, including make, model number or any other identifying information, and the agreed upon consideration for the work and materials.

(d) A notice to the owner purchasing the home improvement that the contractor or subcontractor who performs on the contract or the materialman who provides home improvement goods or services and is not paid may have a claim against the owner which may be enforced against the property in accordance with the applicable lien laws. Such home improvement contract shall also contain the following notice to the owner in **clear and conspicuous bold face type**:

**“Any contractor, subcontractor, or materialman who provides home improvement goods or services pursuant to your home improvement contract who is not paid may have a valid legal claim against your property known as a mechanic’s lien. Any mechanic’s lien filed against your property may be discharged. Payment of the agreed-upon price under the home improvement contract prior to filing of a mechanic’s lien may invalidate such lien. The owner may contact an attorney to determine his rights to discharge a mechanic’s lien.”**

(e) A notice to the owner purchasing the home improvement that, except as otherwise provided in paragraph (g) of this subdivision, the home improvement contractor is legally required to deposit all payments received prior to completion in accordance with **subdivision four of section seventy-one-a of the lien law** and that, in lieu of such deposit, the home improvement contractor may post a bond, contract of indemnity or irrevocable letter of credit with the owner guaranteeing the return or proper application of such payments to the purposes of the contract.

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(f) If the contract provides for one or more progress payments to be paid to the home improvement contractor by the owner before substantial completion of the work, a schedule of such progress payments showing the amount of each payment, as a sum in dollars and cents, and specifically identifying the state of completion of the work or services to be performed, including any materials to be supplied before each such progress payment is due. The amount of any such progress payments shall bear a reasonable relationship to the amount of any work to be performed, materials to be purchased, or expenses for which the contractor would be obligated at the time of payment.

(g) If the contract provides that the home improvement contractor will be paid on a specified hourly or time basis for work that has been performed or charges for materials that have been supplied prior to the time that payment is due, such payments for such work or materials shall not be deemed to be progress payments for the purposes of paragraph (f) of this subdivision, and shall not be required to be deposited in accordance with the provisions of paragraph (e) of this subdivision.

(h) A notice to the owner that, in addition to any right otherwise to revoke an offer, the owner may cancel the home improvement contract until midnight of the third business day after the day on which the owner has signed an agreement or offer to purchase relating to such contract. Cancellation occurs when written notice of cancellation is given to the home improvement contractor. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid. Notice of cancellation shall be sufficient if it indicates the intention of the owner not to be bound. Notwithstanding the foregoing, this paragraph shall not apply to a transaction in which the owner has initiated the contact and the home improvement is needed to meet a bona fide emergency of the owner, and the owner furnishes the home improvement contractor with a separate dated and signed personal statement in the owner's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the home improvement contract within three business days. For the purposes of this paragraph the term "owner" shall mean an owner or any representative of an owner.

(i) Before a contractor or subcontractor begins work on a home, such writing shall disclose to the homeowner the existence of a property and/or casualty insurance policy that covers the scope of such contractor or subcontractor's employment would an insurance claim be filed resulting from losses arising from the work at such property. Such disclosure shall also include the contact information of the insurance company providing such property and/or casualty insurance, including a phone number and address.

2. The writing shall be legible, in plain English, and shall be in such form to describe clearly any other document which is to be incorporated into the contract. Before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor. The writing may also contain other matters agreed to by the parties to the contract.

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### **General Business Law §771-a-Responsibilities of home improvement contractors**

No home improvement contractor shall engage in any activity, transaction, or course of business or pay or receive any fee, payment, money, or other thing of value in connection with the financing of a home improvement contract without fully disclosing such activity, transaction, or course of business and any fees, payment, or other thing of value paid or to be paid in connection therewith, and without having obtained the agreement in writing from all parties to the transaction to such activity and the payment therefor.

### **General Business Law §771-b Responsibilities of roofing contractors**

1. Every roofing contractor shall enter into a written contract with an owner pursuant to all of the provisions of section seven hundred seventy-one of this article before engaging in the business of roofing, gutter, downspout or siding services for such owner. In addition, the contract entered into under this section shall contain the name of the insurer, type of insurance coverage as required by subdivision nine of this section, and the insurance policy limits obtained by the roofing contractor.

2. A roofing contractor shall not advertise or promise to pay or rebate all or any portion of any insurance deductible as an inducement to the sale of goods or services. As used in this section, a promise to pay or rebate includes granting any allowance or offering any discount against the fees to be charged or paying the insured or any person directly or indirectly associated with the property any form of compensation, gift, prize, bonus, coupon, credit, referral fee, or other item of monetary value for any reason.

3. An owner who has entered into a written contract with a roofing contractor to provide goods or services to be paid under a property and casualty insurance policy may cancel the contract prior to midnight on the third business day after the insured party has received written notice from the insurer that all or any part of the claim or contract is not a covered loss under the insurance policy. Cancellation occurs when written notice of cancellation is given to the roofing contractor. Notice of cancellation, if given by registered or certified mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid. Notice of cancellation shall be sufficient if it indicates the intention of the owner not to be bound. Notwithstanding the foregoing, this subdivision shall not apply to a transaction in which the owner has initiated the contact and the roofing contract is needed to meet a bona fide emergency of the owner, and the owner furnishes the roofing contractor with a separate dated and signed personal statement in the owner's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the roofing contract within three business days. For the purposes of this subdivision the term "owner" shall mean an owner or any representative of an owner.

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4. Within ten days after a contract referred to in subdivision three of this section has been cancelled, the roofing contractor shall tender to the owner any payments, partial payments, or deposits made and any note or other evidence of indebtedness. If, however, the roofing contractor has performed any emergency services, acknowledged by the owner in writing to be necessary to prevent damage to the premises, the roofing contractor shall be entitled to the reasonable value of such services. Any provision in a contract referred to in this subdivision that requires the payment of any fee for anything except emergency services shall not be enforceable against the owner who has cancelled a contract pursuant to this section.

5. A roofing contractor shall not require an owner to provide a deposit for the work and materials. A roofing contractor shall not mandate that a particular form of payment be made in order to commence performance of the home improvement. A roofing contractor may invoice for payment of the materials portion of the project upon delivery of the materials to the owner of the property. The material cost must be disclosed to the property owner in writing in advance of payment. A roofing contractor may invoice the remainder of the project upon successful completion of all contracted work.

6. A roofing contractor shall not abandon, or fail to perform, without justification, any roofing contract, nor shall the roofing contractor deviate from or disregard plans or specifications in any material respect without the consent of the owner. A roofing contractor shall abide by the applicable building code for the jurisdiction where the residential property is located.

7. A roofing contractor shall not fail to pay for materials or services rendered in connection with a roofing contract where the contractor has received sufficient funds as payment for the particular contract for which the services or material were rendered or purchased.

8. A roofing contractor shall not perform the reporting, adjusting, or negotiating a claim on behalf of the owner and shall not receive compensation for the referral to any entity that reports, adjusts or negotiates a claim on behalf of an owner. Nothing herein prevents a roofing contractor from communicating with an insurance company representative and sharing his or her technical knowledge when the insurer initiates the communication.

9. (a) A roofing contractor shall provide to the owner adequate proof of insurance of the types and amounts set forth in this subdivision:

(1) A certificate of workers' compensation covering all employees of the roofing contractor. If the roofing contractor does not have any employees, then the contractor must provide a certificate of attestation exemption (CE-200) form from the workers' compensation board; and

(2) Certificates of general liability and property damage insurance in the amount of one hundred thousand dollars per person, three hundred thousand dollars per occurrence, bodily injury; and fifty thousand dollars for each occurrence and aggregate, property damage.

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(b) The insurance requirements set forth in this subdivision shall apply to roofing contracts performed in all political subdivisions that do not contain any insurance requirements for such contracts.

### **General Business Law §772 Penalty for fraud**

1. Any owner who is induced to contract for a home improvement, in reliance on false or fraudulent written representations or false written statements, may sue and recover from such contractor a penalty of five hundred dollars plus reasonable attorney's fees, in addition to any damages sustained by the owner by reason of such statement or representations. In addition, if the court finds that the suit by the owner was without arguable legal merit, it may award reasonable attorney's fees to the contractor.

2. Nothing in this article shall impair, limit, or reduce the statutory, common law or contractual duties or liability of any contractor.

### **General Business Law §773 Violations**

1. **Technical Violations**. Every home improvement contractor who violates any of the provisions of this article shall be subject to a civil penalty not to exceed one hundred dollars.

2. **Substantial Violations**. Every home improvement contractor who fails to deposit funds in an escrow account or provide a bond or contract of indemnity or irrevocable letter of credit in compliance with the requirements of section seventy-one-a of the lien law, or who fails to provide a written contract substantially in compliance with the requirements of this article, shall be subject to a civil penalty not to exceed the greater of two hundred fifty dollars for each violation or five percent of the aggregate contract price specified in the home improvement contract; provided, however, that in no event shall the total penalty exceed twenty-five hundred dollars for each contract.

3. **Mitigating factors**; defenses. In an instance where the contractor has been shown to have committed multiple violations of this article or the provisions of section seventy-one-a of the lien law, the court shall consider the following factors in assessing a civil penalty pursuant to subdivision two of this section: the volume of business which the home improvement contractor performs on an annual basis, the number of contracts in violation, the actual financial loss or exposure to financial loss suffered by any owner a result of the violations, and whether the home improvement contractor acted in good faith or willfully with respect to such violations. No home improvement contractor shall be subject to the increased penalties provided by subdivision two of this section if such contractor shows by a preponderance of the evidence that the violation was not

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intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such a violation.

### **General Business Law §774 Action by the Attorney General**

1. Upon any violation of the provisions of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or justice that the defendant has violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eight thousand three hundred three of the civil practice law and rules, and direct restitution.

In connection with an application made under this section, the attorney general is authorized to take proof and to make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice laws and rules.

2. The provisions of this article may be enforced concurrently by the director of a municipal consumer affairs office, or by the town attorney, city corporation counsel, or other lawful designee of a municipality or local government, and all moneys collected thereunder shall be retained by such municipality or local government.

### **General Business Law §775 Applicability**

This article shall not exempt any contractor subject to its provisions from complying with any local law with respect to the regulation of home improvement contractors, provided, however, that after the effective date of this article, no political subdivision may enact a local law inconsistent with the provisions of section seven hundred seventy-one of this article.

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### **The Law**

**New York Personal Property Law §426**

**Chapter 41. Of the Consolidated Laws**

**Article 10-a. Door-To-Door Sales Protection Act**

### **Personal Property Law §426**

#### **Definitions**

In this article:

1. “Door-to-door sale” shall mean a sale, lease or rental of consumer goods or services in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer’s agreement or offer to purchase is made at a place other than the place of business of the seller. [This subdivision of the law goes on to list a number of exceptions]

2. “Consumer goods or services” shall mean goods or services purchased, lease, or rented primarily for personal, family or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

### **Personal Property Law §427**

#### **Buyer’s or other obligor’s right to cancel**

1. In addition to any right otherwise to revoke an offer, the buyer or other person obligated for any part of the purchase price may cancel a door-to-door sale until midnight of the third business day, or until midnight of the seventh business day in the case of a door-to-door sale of a personal emergency response service, after the day on which the buyer has signed an agreement or offer to purchase relating to such sale.

2. Cancellation occurs when written notice of cancellation is given to the seller.

3. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid.

4. Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound.

### **Personal Property Law §428**

#### **Form of notice; statement of buyer’s rights**

1. In a door-to-door sale, the seller shall furnish to the buyer

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(a) a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g. Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in not less than ten-point bold face type, a statement in substantially the following form:

“YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.”

(b) at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned “NOTICE OF CANCELLATION”, which shall be attached to the contract or receipt and easily detachable, and which shall contain in not less than ten-point bold face type the following information and statements in the same language, e.g. Spanish, as that used in the contract:

### NOTICE OF CANCELLATION

(enter date of transaction)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY

THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE



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SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO

(Name of Seller),

AT Address of Seller

(Place of Business)

NOT LATER THAN MIDNIGHT OF

(Date)

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's Signature)

and the seller shall complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

2. In a door-to-door sale, the seller shall inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel. Until the seller has complied with this section, the buyer or any other person obligated for any part of the purchase price may cancel the door-to-door sale by notifying the seller in any manner and by any means of his intention to cancel. The period prescribed by subdivision one of section four hundred twenty-seven shall begin to run from the time the seller complies with this section.

3. A door-to-door sales contract or receipt shall not include any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this article including specifically his right to cancel the sale in accordance with the provisions of this article.

4. A door-to-door sales contract or receipt shall disclose conspicuously the seller's refund policy as to all goods, wares or merchandise subject to the door-to-door sales agreement. If the seller fails to disclose conspicuously the applicable refund policy, then the seller shall be liable to the buyer for a cash refund of the total price or a credit of the total price, at the buyer's option, provided that within twenty days from the date of delivery of the purchased item or items, the buyer makes a demand therefor and provided that the merchandise is in substantially as good condition as when received by the buyer. In no event shall this subdivision be deemed to supercede a refund policy of a seller which allows return of merchandise more than twenty days after the date of delivery of the purchased item or items. The amount paid by the buyer to the seller shall be

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refunded or credited, as the case may be, within ten business days from the date of return of the seller's merchandise in substantially as good condition as when received by the buyer.

5. This section does not relieve any person, firm, corporation or association subject to the provisions of this section from complying with any other applicable law, ordinance, rule or regulation relating to refund policies which affords the buyer greater protection than do the provisions of this section.

### **The Law**

#### **New York Lien Law**

#### **Chapter 33. Of the Consolidated Laws**

#### **Article 3-a. Definition and Enforcement of Trusts**

#### **Lien Law §71-a-Further trust funds received or receivable by owner under executory contract for the sale and improvement of real property.**

1. As used in this section,

(a) A “contract of sale” is an executory contract for the sale of real property and the improvement thereof by the construction of a building thereon.

(b) “Advances” include funds received by the owner and his rights of action for payment thereof.

2. (a) Advances made by or on behalf of a vendee of real property to the owner under or pursuant to a contract of sale shall constitute assets of a trust, as defined in this section, of which the owner is trustee, notwithstanding that such advances may also be assets of a trust defined in [section seventy](#) of this chapter.

(b) Such advances shall be held and applied by the owner for the payment of the cost of improvement. The trust claims defined in [subdivision three\(a\) of section seventy-one](#) of this chapter shall have priority over trust claims which the vendee has under the further trust provided in this section. Advances shall cease to be subject to the further trust provided in this section after they have been applied by the owner for payment of the cost of improvement, provided that no part of the advances shall be applied or be deemed applied for payment of the cost of improvement until all trust assets, as defined in [subdivisions five\(a\) to five\(f\), inclusive, of section seventy](#) of this chapter, which have been received by the owner from all other sources, have been exhausted.

(c) Such advances, or any portion thereof remaining after application of such advances for payment of the cost of improvement, shall continue to be held in trust by the owner for the benefit of the vendee, until the trust is terminated (i) by the owner's performance of the terms of the contract of sale, or (ii) by a default of the vendee excusing the owner's performance of the terms of the contract of sale, or (iii) by release or discharge of the owner's liability to refund such advances to the vendee.

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(d) Until the further trust is terminated as provided in this section, such advances shall not be applied by the owner for any purpose other than payment of the cost of improvement and satisfaction of any liability of the owner to refund such advances, or any part thereof, to the vendee. Upon termination of the said trust, the beneficial interest in such advances or any portion thereof remaining in the hands of the owner shall vest in the owner, provided that all trust claims applicable to such advances have been paid or discharged.

(e) Any provision whereby the vendee waives the provisions of this section, whether contained in the contract of sale or otherwise, shall be absolutely void.

(f) Subject to the provisions of this section, the rights and remedies which may be exercised by a holder of trust claims with respect to assets of a trust defined in [section seventy](#) of this chapter may be exercised, in the same manner and to the same extent, by the vendee with respect to such advances.

(g) The enforcement of the trust provided in this section shall not be deemed to prohibit the vendee from seeking to enforce such additional or alternative remedies provided by law as shall afford the vendee complete relief.

3. (a) The initial advance pursuant to a contract of sale which by its terms provides for or is incidental to a contract providing for the construction on the subject real property of residential condominium unit or any structure designed solely for residential occupancy of not more than two families living separately, on property to be purchased shall, at the vendee's option, be deposited within five business days thereafter by the recipient in an interest bearing escrow account in a bank, trust company, savings bank, state or federal savings and loan association, located in this state. Such deposit, together with the interest accumulated thereon, shall remain the property of the vendee except as otherwise provided herein. The recipient shall advise the vendee in writing of the name of the depository where the funds have been placed within ten business days after such deposit has been made.

(b) In lieu of making the deposit of such moneys in an escrow account as provided in paragraph (a) of this subdivision, the recipient may post with the vendee a bond or contract of indemnity, issued by a surety company licensed to execute such an instrument in this state, guaranteeing the return of the moneys which otherwise would be required to be deposited in such escrow account, in which case the recipient shall not be required to deposit such money in an escrow account. Said bond or contract of indemnity shall be delivered to the vendee within ten business days after receipt of the initial advance.

(c) At any time after making the deposit of such moneys in the escrow account, the recipient may post with the vendee a bond or contract of indemnity issued by a surety company licensed to execute such an instrument in this state guaranteeing the return of such moneys, in which case the recipient shall not be required to maintain the deposit of such moneys in such account.

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(d) Such advance shall be retained in the escrow account or such bond or contract of indemnity continued in effect until the trust is terminated (i) by the recipient's performance of the terms of the contract of sale, or (ii) by default of the vendee excusing the recipient's performance of the terms of the contract of sale, or (iii) by release or discharge of the recipient's liability to refund such advance to the vendee, or (iv) upon transfer of title of the real property to the vendee.

(e) Every contract of sale which by its terms provides for or is incidental to a contract providing for the construction on the subject real property of a residential condominium unit or a structure designed solely for the residential occupancy by not more than two families living apart, shall contain a statement advising the vendee of the provisions of this subdivision. Such statement shall be printed in bold type which is at least two points larger than any other printing contained thereon and shall read as follows:

**“YOU, AS THE PURCHASER OF THIS RESIDENCE, MAY REQUIRE THE RECIPIENT OR CONTRACTOR TO DEPOSIT THE INITIAL ADVANCE MADE BY YOU IN AN ESCROW ACCOUNT. IN LIEU OF SUCH DEPOSIT, THE RECIPIENT OR CONTRACTOR MAY POST A BOND OR CONTRACT OF INDEMNITY WITH YOU GUARANTEEING THE RETURN OF SUCH ADVANCE.”**

4. (a) Under a home improvement contract, payments received from an owner by a home improvement contractor prior to the substantial completion of work under the contract shall be deposited within five business days thereafter by the recipient in an escrow account in a bank, trust company, savings bank, or state or federal savings and loan association, located in this state. No depository institution acting on the instructions or otherwise dealing with a home improvement contractor shall be obliged to inquire into the validity or propriety of any deposits to or withdrawals from any escrow account established by the home improvement contractor in compliance with this subdivision or to insure that any withdrawals from such account are applied for any specific purpose or purposes by the home improvement contractor. Such deposit or deposits shall remain the property of such owner except as otherwise provided herein. Unless the home improvement contract specifies the name of the depository where the funds will be placed, no later than ten business days after the deposit has been made, the recipient shall advise the owner in writing of the name of the depository where the funds have been placed. The recipient shall not be required to keep in separate depository accounts the funds of the separate owners from whom payments have been received, provided his books of account shall clearly show the allocation to each owner of the funds deposited in his general or special depository account or accounts.

(b) In lieu of making the deposit of such payment or payments in an escrow account as provided in paragraph (a) of this subdivision, the recipient may post with the owner a bond or contract of indemnity, issued by a surety company licensed to execute such an instrument in this state, or an irrevocable letter of credit issued by a bank, trust company, savings bank, or state or federal savings and loan institution located in this state, guaranteeing the return of the payments, or the proper application of the payments to the purposes of the contract, which otherwise would be required to be deposited in such escrow account, in which case the recipient shall not be required

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to deposit such payments in an escrow account. Said bond or contract of indemnity or irrevocable letter of credit shall be delivered to the owner within ten business days after receipt of the payment.

(c) At any time after making the deposit of such payment or payments in the escrow account, the recipient may post with the owner a bond or contract of indemnity issued by a surety company licensed to execute such an instrument in this state, or an irrevocable letter of credit issued by a bank, trust company, savings bank, or state or federal savings and loan institution located in this state, guaranteeing the return or proper application of such payment to the purposes of the contract, in which case the recipient shall not be required to maintain the deposit of such payment in such account.

(d) Such deposit or deposits shall remain the property of the owner or such bond or contract of indemnity or irrevocable letter of credit continued in effect until (i) the proper payment, transfer or application of such deposits by the contractor to the purposes of the home improvement contract under the schedule of payments provided therein; or (ii) the default or breach of the owner excusing the recipient's performance of the terms of the home improvement contract, but only to the extent of any reasonable liquidated damage amount as defined in [section 2-718 of the uniform commercial code](#) and set forth in the contract, and only after seven days prior written notice to the owner; or (iii) substantial performance of the contract.

(e) The recipient shall not withdraw deposits from the escrow account in excess at any time of the total amount shown in the schedule of payments in the home improvement contract. The amount of any such progress payments shall bear a reasonable relationship to the amount of work to be performed, materials purchased, or expenses for which the contractor would be obligated.

(f) If the home improvement contract provides that the home improvement contractor will be paid on a specified hourly or time basis for work that has been performed or charges for materials that have been supplied prior to the time that payment is due, this subdivision shall not apply to such payments for such work or materials.

(g) Failure to place customer deposits in escrow, except as provided herein, shall constitute a violation of this section.

**Notes: The purpose of this summary is to assist home improvement contractors and their attorneys in drafting agreement which comply with the New York State Home Improvement Contracts Law, found at General Business Law, Article 36-A, Sections 770 and following. Other provisions of law and court interpretations of these statutes may be relevant to particular contract situations. Therefore, it is important for contractors and their attorneys to examine the entire Home Improvement Contracts Law, as well as Lien Law, Article 3-A and Personal Property Law, Article 10-A. Use the summary only as a helpful “starting place” and not as a final interpretation of the law. The aforementioned is provided for informational purposes only.**