

Notice of Rulemaking Hearing
Department of Commerce and Insurance
Board of Licensing Contractors

There will be a hearing before the Board of Licensing Contractors to consider the promulgation of rules pursuant to Tenn. Code Ann. §62-6-108. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place at the Marriott Knoxville, 500 Hill Avenue, S.E., Knoxville, Tennessee 37915 at 9:00 a.m. on the 24th day of September, 2008.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department of Commerce and Insurance to determine how it may reasonably provide such aid or service. Initial contact may be made with Don Coleman, the Department's ADA Coordinator, at 500 James Robertson Parkway, 5th Floor, Nashville, Tennessee 37243 at (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact Carolyn Lazenby, Executive Director of the Board of Licensing Contractors at 710 James Robertson Parkway, Andrew Johnson Tower, 3rd Floor, Nashville, Tennessee 37243, telephone (615) 741-8307.

Substance of Proposed Rules

Chapter 0680-01
Licensing

New Rules

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0680-01-.25 Contracting in Correct Name

0680-01-.25 CONTRACTING IN CORRECT NAME.

Upon receiving certificate of licensure from this Board, the licensee has an affirmative responsibility to enter into contracts and operate its related contracting business under the name in which it is licensed in order to notify and prevent confusion on the part of the public at large of an entity's licensure status. Contracting in a name different than that in which an entity is licensed by this Board is considered a violation of this chapter, and will be subject to discipline accordingly.

Authority: T.C.A. §§62-6-108(a) and 62-6-115.

Chapter 0680-07
General Regulations for Home Improvement Contractors

New Rules

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0680-07-.01 Fees.

- (1) Initial application and license fee (biennial) \$250.00 per business location
- (2) Renewal fee (biennial) \$200.00 per business location
- (3) Late renewal fee \$10.00 each month; not to exceed three (3) months
- (4) Duplicate license fee for one lost, destroyed or mutilated \$10.00

Authority: T.C.A. §§ 62-6-504 and 62-6-513(3).

0680-07-.02 Definitions.

The definitions contained in T.C.A. § 62-6-501, are incorporated into these regulations by references as 0680-07-.02.

Authority: T.C.A. §§ 62-6-513(3).

0680-07-.03 License For Home Improvement Contractors.

All home improvement contractors required to be licensed shall have licenses on and after January 1, 1989.

Authority: T.C.A. §§ 62-6-502 and 62-6-513(3).

0680-07-.04 Advertising.

- (1) A licensed home improvement contractor may not solicit home improvement business by way of advertisement in a newspaper, magazine, circular, or printed document, or by way of television or radio announcement, unless the name and license number of the contractor is stated in the advertisement.
- (2) A licensee may not directly or indirectly publish any advertisement relating to home improvements, including finance or credit terms, that contains an assertion, representation, or statement of fact that is false, deceptive or misleading.
- (3) General statements, such as "Factory to You," "Direct to You," "Buy from the Manufacturer," "Save the Middleman's Profit," or phrases of similar meaning may not be used unless the advertiser is actually the maker or producer of the merchandise advertised or offered for sale.

Authority: T.C.A. §§ 62-6-510(9) and 62-6-513(3).

0680-07-.05 Notice Of Change Of Licensing Information.

A licensee shall notify the Board in writing within thirty (30) days of any change of control in ownership, management, address or trade name. Upon notification of a substantial change in control of ownership, the Board reserves the right to require a new application for licensure.

Authority: T.C.A. §§ 62-6-506(h) and 62-6-513(3).

0680-07-.06 Time Limitations For Filing Complaints.

The Board may summarily dismiss any complaint brought against a licensee after one (1) year from the date of the home improvement contract for the work from which the complaint arises, unless the Board finds that the delay was justified and does not result in an undue burden for the licensee.

Authority: T.C.A. §§ 62-6-513(3) and 62-6-513(4).

0680-07-.07 Application For Licensure As Home Improvement Contractor.

- (1) An application for licensure as a home improvement contractor, whether it is in the name of an individual, partnership, proprietorship, or corporation, may not be accepted, if the name under which the licensee will be trading is the name being used by an existing licensee, or is so similar to the name being used by an existing licensee that it will cause confusion on the part of the public at large, unless the applicant has obtained exclusive use of this name under the federal trademark laws.
- (2) If the applicant's mailing address is a post office box, the applicant must also include a physical address for the business location.

Authority: T.C.A. §§ 62-6-506(c) and 62-6-513(3).

0680-07-.08 Temporary Licenses.

- (1) Pursuant to T.C.A. § 62-6-506(d), the Executive Director may grant an application for a home improvement license a temporary license pending a final decision of the Board on the Application for a permanent license if:
 - (a) Applicant has properly filed for a permanent license and has paid the requisite license fee;
 - (b) Applicant has filed a bond or evidence of financial responsibility in accordance with T.C.A. §62-6-506(h).
 - (c) Applicant submits a written request for a temporary license to the Executive Director; and
 - (d) Executive Director determines that granting the applicant a temporary license is in the public interest and that granting the applicant a temporary license does not pose a substantial risk of harm to owners for whom the applicant would do home improvement work.
- (2) As soon as reasonably possible after receiving a written request for a temporary license, but not more than forty-five (45) days after receiving the request, the Executive Director shall inform the applicant in writing whether the Executive Director has denied or granted the applicant a temporary license. If the Executive Director grants an applicant a temporary license, the writing to the applicant shall state that the temporary license terminates automatically when the Board decides to issue or deny the applicant a permanent license and that the Executive Director can terminate the temporary license at any time before final action on the application for a permanent license. Notwithstanding the above, a temporary license shall automatically expire after sixty (60) days from the effective date, and may not be renewed. If an additional application for a temporary license is filed within thirty (30) days after expiration of a previously issued temporary license, then the fee shall be twenty-five dollars (\$25.00).
- (3) When the Executive Director issues a temporary license to an applicant, the Executive Director shall issue the applicant a license which is specially marked as temporary. This temporary license may be in the form of a letter from the Executive Director. The Executive Director shall state in this letter the effective date of the temporary license.
- (4) A temporary license shall automatically expire if the Board issues a Final Order denying the applicant's request for a permanent license.
- (5) The Executive Director or the Board may terminate a temporary license at any time for any reason which is not arbitrary or capricious. When the Executive Director or the Board terminates a temporary license, it shall take effect upon receipt by the applicant of the notice of termination, or 10 days after the mailing of the notice of termination, or whichever comes first.

Authority: T.C.A. §§ 62-6-506(c), 62-6-506(d) and 62-6-513(3).

0680-07-.09 License Renewals.

- (1) An application for a license previously issued which is received within one (1) year from the date of issue shall be presumed to be an application for a renewal of that license; no renewal application will be accepted more than ninety (90) days after the expiration of the license.
- (2) An application for a license previously issued which is received more than ninety (90) days from the date of the previously issued license's expiration shall be presumed to be an application for a new license.

- (3) Effective Date of Renewals. A license renewed pursuant to this regulation may not be retroactive to the date that the previously issued license expired, but shall take effect on the date that the applicant fulfills the Board's requirements for renewal. The license shall expire two (2) years from the date on which the previously issued license expired.

Authority: T.C.A. §§ 62-6-506(g), 62-6-513(3) and 62-6-507(d).

0680-07-.10 Credit Reports.

- (1) The Board in its discretion may require an applicant for an original contractor's license to submit to the Board a credit report from an approved credit reporting agency and a statement of all outstanding judgements against the applicant.
- (2) The Board shall consider this credit report and statement in determining whether the applicant has demonstrated financial solvency.

Authority: T.C.A. §§ 62-6-506(a) and 62-6-513(3).

0680-07-.11 Financial Statement.

The Board may require any applicant to submit a reviewed financial statement attested to by either a certified public accountant or licensed public accountant; or on a form prescribed by the Board with a notarized affidavit, in order to determine the applicant's financial stability.

Authority: T.C.A. §§ 62-6-506(a) and 62-6-513(3).

0680-07-.12 Filing Of Security Prior To Issuance Of License.

- (1) The requirements of T.C.A. § 62-6-506(h) must be effective and evidence thereof filed with the Board prior to issuance of the contractor's license.
- (2) Upon cancellation of an instrument described in T.C.A. § 62-6-506(h) the licensee must notify the Board in writing within ten (10) days of such cancellation.

Authority: T.C.A. §§ 62-6-506(h) and 62-6-513(3).

0680-07-.13 Bonds.

- (1) Bonds shall be written on a form approved by the Insurance Commissioner, available through the Board, which shows the name of the principal as it appears on the license application.
- (2) Description of Bonds.
 - (a) Cash Bonds.
Cash bonds may not include personal checks.
Cash bonds may include:
 1. Currency, which shall be deposited with the State Treasurer, subject to the

order of the Board, and which may not earn interest;

2. Cashier's check, certificate of deposit for a term of at least 2 years or certified check:
 - (i) Issued by a financial institution;
 - (ii) Showing the name of the purchaser, and
 - (iii) Assigned and payable to the Board.
3. Savings and loan association certificates, passbook or share accounts, credit union or share accounts, passbook savings or other similar accounts assigned and payable to the Board, which shall be issued for periods of not less than 1 year and accompanied by delivery of the certificate passbook, share account, certificate, passbook or other similar account to the Board.

(b) Property Bond

1. A property bond shall be the assignment to the Board by an owner applicant of an interest of ten thousand dollars (\$10,000.00) in real property located in Tennessee; and submission of a title search showing any encumbrances on the property.
2. The Board may require the applicant to submit an appraisal of the property to ascertain that the unencumbered value of the property is at least ten thousand dollars (\$10,000).

(c) Surety Bond.

1. A surety bond shall be in the amount of ten thousand dollars (\$10,000), issued to a home improvement contractor by an approved insurance company authorized to do business in Tennessee, for the benefit of a claimant, who has been damaged by the contractor's breach of a home improvement contract. If the bond ceases to be in effect, the home improvement contractor's license shall become invalid.
2. The Board may refuse to accept a bond written for a home improvement contractor by a surety which has failed to meet its obligations under this subtitle.

(d) Letter of Credit.

1. A bond in the form of an irrevocable letter of credit shall be an agreement, between a financial institution and a home improvement contractor on record at the Board wherein the FDIC insured financial institution agrees to extend an irrevocable line of credit amounting to ten thousand dollars (\$10,000), for the purpose of honoring claims filed with the Board.
2. The irrevocable letter of credit shall show the name of the financial institution extending the credit and the name of the applicant or home improvement contractor to whom the letter of credit was issued as it appears on the applicant's or home improvement contractor's license application.

(3) Release of Bond.

A bond may not be released until whichever occurs last:

- (a) One year after the inactivation, expiration or revocation of home improvement contractor's license;
- (b) After the pending claims against the licensee filed during the period described in 3(a) have been heard and satisfied, or dismissed.

Authority: T.C.A. §§ 62-6-506(h) and 62-6-513(3).

0680-07-.14 County Adoption Of Home Improvement Law

- (1) Effective July 1, 2007, the Home Improvement license requirement is required in the counties of: Bradley, Davidson, Hamilton, Haywood, Johnson, Knox, Robertson, Rutherford and Shelby.
- (2) The legislative body of the county may, by two-thirds (2/3) majority vote, adopt the home improvement license law. Such county must notify the Board in writing of the effective date to implement the requirements to home improvement contractors.

Authority: T.C.A. §62-6-516(b).

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 31st day of July, 2008. (FS 07-24-08; DBID 886-887)