



State of Vermont
Office of the Secretary of State
Office of Professional Regulation
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Sarah Copeland Hanzas, Secretary of State
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March 20, 2024

To: Sen. Kesha Ram Hinsdale, Chair
Senate Committee on Economic Development, Housing, and General Affairs

From: Kevin A. Rushing, Director, Office of Professional Regulation
Lauren K. Layman, General Counsel, Office of Professional Regulation

Re: Residential Contractor Registry Update

Dear Committee,

Thank you for the opportunity to testify about the Vermont residential contractor registry and the Office of Professional Regulation's efforts to date.

OPR Background

The Vermont Office of Professional Regulation (OPR) oversees 51 professions, from nurses to mixed martial arts contestants and residential contractors, and about 80,000 licensees. Our team consists of 41 employees, including 9 licensing administrators, who assist licensees directly and process license applications, and an enforcement unit with 9 investigators (6 certified law enforcement), 4 prosecutors, 2 case managers, and a paralegal. We also have inspectors who are out in the field every day inspecting the businesses we license, a general counsel's unit with three lawyers and a policy analyst, a docket clerk to manage disciplinary matters, and a director and assistant director.

OPR issues licenses based on requirements and qualifications established in statutes and rules. We have two different models of regulation in our office – the board-model and the advisor-model. You will see those two different models reflected in our statutes. Our statutes are found in Title 3, which is our umbrella statute, and the majority of the profession-specific statutes are in Title 26. OPR also receives complaints about licensee conduct and, when warranted, investigates and prosecutes licensees for unprofessional conduct. The unprofessional conduct standards governing all licensed professionals in Vermont are found in 3 V.S.A. § 129a.

OPR's core mission is to protect the public. In recent years, we have also been on the forefront of responding to workforce needs, adapting during COVID and emergencies like this summer's

floods, and pursuing progressive occupational licensure policies, such as occupational licensure compacts.

Decision to Regulate Residential Contractors

In 2017, the Senate Committee on Government Operations asked OPR to conduct a “sunrise review” (an analysis and report, governed by 26 V.S.A. Ch. 57, assessing whether and how to license a profession) of whether to license home-improvement and construction contractors. The reason for this request was growing concern about home-improvement fraud and consequent harm to Vermont homeowners. At the same time, after much review and amendment by the Senate Committee on Economic Development, Housing and General Affairs, the Senate passed legislation amending the Vermont Consumer Protection Act (Title 9) to address this same concern. With multiple bills approaching this problem from different angles, the General Assembly asked OPR to conduct a sunrise review. Act 70, § 1 (2017).

The sunrise review process involved extensive outreach to the public, including several news stories, three public hearings, mailings and fliers to supply companies and professional associations, social media reviews, and email outreach to current licensees (e.g., architects, engineers, etc.) and other known interested parties. Additionally, OPR received 120 written comments. OPR staff also conducted a review of other states’ licensing processes, existing Vermont laws protecting homeowners (e.g., civil and criminal laws and consumer protection laws) complaints received by the Vermont Consumer Assistance Program, and other data on harms potentially experienced by homeowners due to home-improvement fraud. Based on this review, OPR concluded that regulation of residential contractors, through a light-touch form of licensure called registration, could help protect homeowners from fraudulent exploitation by contractors. OPR further recommended the creation of qualifications-based certifications for residential contractors, which would allow homeowners to select contractors with training and expertise in certain areas.

Throughout the next two biennia, the Legislature considered OPR’s recommendations in the sunrise report and potential legislation to establish registration and certification for residential contractors. After much discussion and significant amendment, legislation was ultimately passed in the Spring of 2022. The bill was then vetoed, the threshold cost triggering regulation was increased to \$10,000, and, ultimately, the legislation was adopted as part of Act 182 (2022).

Regulation of Residential Contractors

The legislation that ultimately passed is codified at 26 V.S.A. Ch. 106. The law requires any person who contracts with a homeowner to perform residential construction in exchange for \$10,000 or more, inclusive of labor and materials, to register with the Office of Professional Regulation. Residential construction is defined in 26 V.S.A. § 5501 as meaning

- *to build, demolish, or alter*
- *a residential dwelling unit, or a building or premises with four or fewer residential dwelling units, in this State*

- *and includes*
 - *interior and exterior construction, renovation, and repair;*
 - *painting;*
 - *paving;*
 - *roofing;*
 - *weatherization;*
 - *installation or repair of heating, plumbing, solar, electrical, water, or wastewater systems; and*
 - *other activities the Office specifies by rule consistent with this chapter.*

Contractors do not need to complete any training, education, or other qualification to register. (As part of the application process and due to other state laws, contractor applicants do need to answer questions about criminal history, professional discipline elsewhere in the country, and tax and child support status.)

There are six significant exemptions to this requirement specified in the bill, including

- Employees while acting within the scope of employment for a registered residential contractor business;
- Professionals already licensed by the state (e.g. architects, engineers, electricians),
- Businesses performing residential construction under the direct supervision of a professional exempt from registration because they are otherwise licensed by the state (see above);
- Individuals who deliver or install consumer appliances, audio-visual equipment, telephone equipment, or computer network equipment;
- Landscapers;
- Contractors working on structures that are not attached to residential buildings; and
- Work that would typically require registration that is provided in response to an emergency, provided the contractor applies for registration within a reasonable time after performing the work.

Additionally, a business or individual that is performing residential contracting work but does not enter a contract directly with the homeowner (e.g. a subcontractor) does not need to register with OPR.

Once registered, residential contractors are obligated under the law to maintain professional liability insurance and enter into a written agreement with the homeowner. The goal is that these requirements will provide protection for homeowners and contractors from costly damages and avoid disputes and disagreements about the work and cost of work.

The statute also authorizes OPR to establish, through administrative rules, voluntary certifications that will inform consumers about contractors with competence and training in certain subfields and specialties related to residential construction, such as roofing and energy efficiency.

While registered residential contractors are subject to the unprofessional conduct standards in 3 V.S.A. § 129a(a), including prohibitions against fraud and breach of contract, OPR is only authorized to pursue charges against residential contractors for prevent fraud, deceptive behavior, and violations of law. OPR cannot investigate or charge a residential contractor for failing to practice competently (i.e., not conforming to standards of acceptable or prevailing practice) or for poor workmanship. Moreover, OPR does not have the capacity or the expertise to investigate or assess the quality of a residential contractor's work, or to prosecute a residential contractor for a failure to adhere to quality standards.

Outreach and Registration

OPR began registering residential contractors on April 1, 2023. (However, residential contractors are not subject to charges under 3 V.S.A. § 127 for failing to register until after April 1, 2024.) To date, 607 residential contractor businesses and 349 individual residential contractors have registered with OPR. This is a result of significant outreach efforts by OPR and its partners.

In the winter of 2022 and 2023, OPR developed an email list to notify Vermont residential contractors of the upcoming obligation to register with the state. The email list, totaling 23,000 contacts, included residential contracting businesses identified through the state corporations registry using NAICS codes to identify businesses, current licensees who work in the construction businesses (e.g. architects, engineers), and residential contractors found in internet searches. Following this email, OPR participated in several presentations to groups such as Efficiency Vermont and the Vermont Homebuilders and Remodelers Association. The Secretary of State and Deputy Secretary of State also spoke about the registry requirement during appearances on WDEV, WPTZ, WCAX and in other media outlets.

Most recently, the agency sent a poster, electronically and through the mail, to lumber yards, hardware stores, licensees, and others throughout the state with information for contractors on how to register and for the public regarding accessing the registry. The posters contain a QR code for easy access. Since this latest effort, OPR has seen a significant increase in the number of registrants in recent days. It is our hope that, come April 1, 2024, residential contractors will have the information and assistance they need to comply with this new law.

Next Steps

OPR is currently working on the Administrative Rule with stakeholders. The Administrative Rules will include voluntary certifications that licensees can add on top of their mandatory registration. The list of those certifications is a topic that will be discussed with the stakeholder group. OPR aims to work with stakeholders and partners to identify commonalities between third-party credentialing entities to ensure that certifications provided by the state are based on adequate training and experience. The Rules will also provide further clarification to residential contractors and consumers regarding requirements for registration, the obligations of registrants, and the enforcement process.