



VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION

Residential Contractor Regulatory Status Report

Pursuant to Act 182 of 2022

September 13, 2024

Act 182 of 2022 requires the Office of Professional Regulation (OPR; the Office) to report to the House Committees on General, Housing, and Military Affairs and on Government Operations and to the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations concerning the implementation of a registration regulatory system for residential contractors.¹

OPR finds that Vermont consumers would benefit from greater protection against residential contractor fraud. The registry's ability to protect the public is limited by OPR's inability to completely remove fraudulent contractors from the market due to the \$10,000 threshold requirement for registration. Likewise, OPR finds that Vermonters would benefit from residential building safety standards. OPR is instructed by Act 182 to establish a voluntary certification scheme, including minimum competency and work quality standards. However, OPR will not pursue certification related to a residential building safety code at this time. Building safety standards are more effectively regulated through Division of Fire Safety's proactive code enforcement (i.e., permitted projects with mandatory inspections) rather than OPR's reactive, complaint-driven approach to professional conduct enforcement.

¹ Act 182 (2022) Sec. 18

On or before January 15, 2024, the Office of Professional Regulation shall report to the House Committees on General, Housing, and Military Affairs and on Government Operations and to the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations concerning the implementation of 26 V.S.A. chapter 106, including:

- (1) the number of registrations and certifications;*
- (2) the resources necessary to implement the chapter;*
- (3) the number and nature of any complaints or enforcement actions;*
- (4) the potential design and implementation of a one-stop portal for contractors and consumers; and*
- (5) any other issues the Office deems appropriate.*

Executive Summary

The Office of Professional Regulation (OPR) presents three primary findings regarding the current regulation of residential contractors in Vermont:

1. Homeowners would benefit from additional protection against residential contractor fraud.

- OPR's residential contractor registration is only required for contractors who provide home-improvement services worth more than \$10,000. Residential contractor registration is limited to considerations of fraud, and specifically precludes any consideration of work quality/safety.
- Unless the contractor is registered with OPR, allegations of fraud in projects of less than \$10,000 fall outside the Office's jurisdiction. Nearly all complaints filed with OPR against residential contractors either fail to satisfy the \$10,000 contract threshold or concern work quality/safety issues.
- The \$10,000 jurisdictional threshold for registration creates a tolerance for misconduct based on a monetary value which is unlike any other professional registration program under OPR jurisdiction. This threshold prevents OPR from removing bad actors from the market: even if a contractor is found guilty of fraud, OPR can only prohibit that individual from selling services of more than \$10,000.
- This \$10,000 threshold creates a regulatory system where regulation is based on the scale of project rather than scope of practice: residential contractors who are providing the same services and performing the same work are subject to different regulatory burdens depending on what their customers can afford.

2. There is no assurance of work quality or building safety for single-family homeowners.

- The Division of Fire Safety regulates Vermont's Fire and Building Safety Code (FBSC).
- FBSC enforcement may include but is not limited to: state construction permits and inspections; state electrical permits and inspections; state plumbing permits and inspections; and certain work to be performed only by licensed tradespeople (e.g., plumbers, electricians, elevator mechanics).
- However, FBSC jurisdiction is limited to "public buildings" (20 V.S.A. § 2730). Owner-occupied single-family homes are exempt from state FBSC requirements.

3. Residential contractor certifications will not resolve work quality or building safety issues.

- Per Act 182 (2022), OPR must develop state certifications for residential contractors pertaining to two specialties: *OSHA standards* on construction sites; and *energy efficient building methods* for insulators, carpenters, and ventilation installers.
- Unlike residential contractor registration, OPR's certification regulations may enforce 3 V.S.A. § 129a(b) considerations of work standards. 26 V.S.A. § 5503(b)(2). However, certification is voluntary, which means that work quality standards are not applied to all within the profession.
- OPR may revoke a certification or even remove a contractor from the registry. However, OPR cannot prohibit the contractor from continuing to offer services for less than 10,000 dollars. Likewise, OPR's professional certifications restrict professional titles, but not market access: uncertified individuals cannot identify themselves as "state certified" but can still provide the same services.
- Vermont does not have a residential building safety code. While OPR has authority to establish additional residential contractor certifications, the Office is unlikely to pursue any certification related to residential building fire and/or structural safety: the expertise in those areas, as well as the most effective enforcement mechanism, lie squarely with Division of Fire Safety.

Professional Registration and Residential Contractor Fraud

The Office of Professional Regulation finds that residential contractor fraud causes nonspeculative harm to consumers and that professional regulation can be an effective countermeasure. However, the \$10,000 regulatory threshold restricts OPR's public protections and creates an equity issue for Vermont's contractors and consumers alike.

Under the current statutory limitations, even if the Office of Professional Regulation finds a residential contractor guilty of fraud, the Office can only prohibit that individual from providing home improvement services worth more than \$10,000. This \$10,000 threshold creates a system where licensure is based on the scale of project rather than scope of practice: residential contractors who are providing the same services and performing the same work, are subject to different regulatory burdens depending on what their customers can afford.

A monetary threshold for fraud protection creates a tolerance for fraud. While the Consumer Protection Unit in the Attorney General's Office may prosecute fraudulent contractors for contracts valued at less than \$10,000, the Consumer Assistance Program is not designed to remove providers from the market. To that end, professional regulation is uniquely positioned. The legislative intentions behind the \$10,000 threshold aimed to balance conflicting stakeholder positions regarding the benefits vs. burdens of regulation. In practice, however, this threshold is a challenging regulatory feature. The inability to restrict fraudulent contractors from market access is unlike any other registered profession under OPR jurisdiction, and by comparison, offers significantly weaker public protection.

Arguably, OPR may have jurisdiction over contracts valued at \$10,000 or less if the contractor is actively registered. However, this scenario has yet to occur. Instead, OPR frequently screens out complaints of potential residential contractor fraud, not due to the complaints' lack of merit, but because both the contract values and the contractors fall outside of OPR jurisdiction. The regularity of these complaints suggests Vermonters would benefit from additional protection against fraudulent actors. Likewise, the frequency of these complaints leaves OPR concerned about the competition Vermont's legitimate residential contractors may face from fraudulent service providers, and how the prevalence of *lesser* fraud may impact Vermont's consumer confidence in the industry as whole.

Unprofessional Conduct Enforcement

The regulation and conduct enforcement of residential contractors is primarily limited to cases of fraud: the Office of Professional Regulation is not responsible for evaluating code enforcement or any other determination of work quality. Since regulating residential contractors in December 2022, OPR has received 41 conduct complaints. The nature of these complaints includes but is not limited to allegations of fraud, unauthorized practice, negligence, and incompetent practice. Of these complaints, six are pending investigation and 35 have been screened out or closed after investigation. Most complaints pertain to unregistered contractors whose contracts fail to meet the \$10,000 project threshold or relate to quality of work.

Unauthorized Practice

[3 V.S.A. § 129a\(a\)](#) limits the definition of unprofessional conduct to actions made by OPR licensees. Consequently, if an individual commits misconduct while providing regulated services without a license from OPR, they can only be charged with unauthorized practice and sanctioned with a monetary penalty. [3 V.S.A. § 127](#). Residential contractors were given a grace period until April 1, 2024 to register with OPR, which meant no enforcement action was available against unregistered contractors through March 31, 2024.

\$10,000 Regulatory Threshold

Residential contractors are required to register with OPR if they are going to contract with a homeowner for more than \$10,000 (inclusive of labor and materials). [26 V.S.A. § 5501](#). The residential contractor registry was intended to protect the public from fraudsters by removing bad actors from the market. However, unregistered bad actors working under the \$10,000 threshold are not subject to OPR jurisdiction.

Moreover, if a residential contractor is actively registered with OPR and found in a disciplinary hearing to have committed fraud, OPR cannot remove the contractor from the market entirely: the \$10,000 regulatory threshold only authorizes OPR to remove bad actors from the registry. While all charged enforcement complaints that result in OPR discipline become public records, a residential contractor whose registration was revoked for fraud can still provide the same services so long as project costs are below the \$10,000 regulatory threshold. This threshold effectively shields fraudulent contractors from OPR's jurisdiction and weakens the regulatory public protections compared to those in any other of OPR's registered professions.

Professional Certifications and Residential Contractor Work Quality/Safety

Per Act 182 (2022), OPR must develop state certifications for residential contractors pertaining to two specialties: *OSHA standards* on construction sites and *energy efficient building methods* for insulators, carpenters, and ventilation installers. Unlike the residential contractor registration, which precludes considerations of work quality (26 V.S.A. § 5510(b)), contractor specialty certifications may include enforcement of 3 V.S.A. § 129a(b) considerations for competent practice and conformance with essential standards of acceptable and prevailing practice.

Professional certification is a distinct regulatory system from both professional registration and professional licensure because certification is voluntary (26 V.S.A. § 3101a). Consequently, the public protections offered by professional certification are more limited than those in either a mandatory registration or licensure system: while OPR can provide consumers with assurance that a certified professional has met a minimum competency standard, the Office is unable to completely remove either malevolent or incompetent actors from the market. OPR would be able to suspend, revoke, or condition a contractor certification, and arguably conduct that impacts a certification could impact a contractor's registration; however, a contractor could remain in the marketplace working under the \$10,000 dollar threshold.

Professional Conduct Enforcement vs. Building Code Enforcement

Vermont's Division of Fire Safety regulates the Fire and Building Safety Code (FBSC).² The FBSC is enforced through construction permits and licensure of tradespeople (e.g., plumbers and electricians). Unlike professional regulation, which focuses licensee conduct, code enforcement focuses on work product during the project. Because code enforcement uses a permit system to establish inspection needs, any deficiencies in a tradesperson's work is likely to be detected by inspectors and rectified in real time.

Where professional regulation relies on complaints to initiate enforcement measures, FBSC permits require the Division of Fire Safety's inspectors to approve work quality on any permitted project. To this extent, code enforcement through permits/inspections is likely a more effective approach than professional regulation could offer through a complaint-basis: it is dubious to assume that consumers could recognize most code violations by their hired tradespeople, especially considering that most work is eventually covered by exterior or interior walls, flooring, roofing, etc.

Importantly, Vermont does not have a residential building safety code. The Division of Fire Safety's jurisdiction is limited to *public buildings* (20 V.S.A. § 2730). Both owner-occupied single-family homes and farm buildings are exempt from the FBSC, unless these structures are used as residential rentals or within the jurisdiction of a municipality which enforces its own building codes. Currently, litigation is the only remedy for Vermont's homeowners who receive poor quality of work from a residential contractor.

CASE STUDIES	
Complaint Case Study #1: 2023-XXX	Complaint Case Study #2: 2024-XXX
Residential contractor hired to build an addition as well as replace a door and window. The contractor knowingly fastened the addition, window, and door to a fully rotten rim joist and studs. Flashing and drip guards are missing, incorrect fasteners are rusting, and water leaks into the house. A post and beam replacement in the basement were undersized and do not share load with existing structural system. The contractor refused to remedy the situation and stopped responding to owner's outreach efforts. Ultimately, the addition was removed from house to repair structural rot. Neither OPR nor DFS have jurisdiction.	Residential contractor hired to renovate a Vermonter's residence. Homeowners paid said contractors over \$116,000 for work. Contractor's work failed to meet professional engineer's designs, failed to use correct materials, and failed to install numerous systems correctly, including: wall framing, roofing, electrical, plumbing, heating, as well as interior work such as doors, cabinets, and flooring. Municipal inspector determined load bearing wall had been removed and declared no more than 2 individuals allowed on the floor at one time. Neither OPR nor DFS have jurisdiction.

While OPR has authority to establish additional residential contractor certifications, the Office is unlikely to pursue any certification related to residential building fire and/or structural safety, given that

² Available online at:

https://firesafety.vermont.gov/sites/firesafety/files/files/rules/dfs_rules_firecode2015_current.pdf

the expertise for those issues is well-established at the Division of Fire Safety. However, if Vermont adopted a residential building safety code that applied to single family owner-occupied dwellings, the State would have to determine the appropriate agency for enforcement. As discussed above, there are significant differences between proactive code enforcement and reactive professional conduct enforcement: code enforcement occurs in real time and as a matter of course in permit inspections to ensure safety and compliance prior to project completion, whereas professional conduct enforcement occurs after the fact in response to complaints filed by consumers.

Where code enforcement regulates the work product, conduct enforcement regulates the individuals' actions. Consequently, OPR excels in the investigation and prosecution of fraud, theft, or any other manner of public harm, whereas the Division of Fire Safety specializes as both an education organization, as well as a quality controller. If a residential building safety code for single family owner-occupied dwellings was adopted, it would be an opportune time to consider the respective roles of the Division of Fire Safety and the Office of Professional Regulation regarding inspections vs. enforcement, as well as the necessary resources required by both agencies for implementation. OPR is proud to be a part of Vermont's continuing efforts to ensure safe, affordable, and energy efficient housing.

OPR Residential Contractor Licensing Trends

The Office of Professional Regulation began accepting applications for registration on December 1, 2022. Since that time, OPR has received 1,392 complete applications, of which 1,388 are approved. Regarding application processing time, nearly half of all applications are approved in the same day, with 84% of all applications approved within 3 business days. Note: most applications submitted to OPR in complete fashion can be approved immediately. Delays in approval times are most often the consequence of an incomplete application.

Table 1: Residential contractor registration administration data as of 06/21/2024.

Status	Residential Contractor Individual	Residential Contractor Business	Total
Active Registration	541	848	1389
Application Expired	54	52	106
Application Incomplete	82	52	134
Application Pending	0	3	3
Application Withdrawn	8	8	16
Preliminarily Denied	1	0	1
Total	685	963	1648

Only one application has been preliminarily denied at this time. The basis for this preliminary denial was due to the applicant having already been disciplined for fraud in another regulated OPR profession. Upon appeal, this individual was granted a registration with conditions to ensure oversight and public awareness. This case is a good example of the registry working to discipline fraudulent actors. Nevertheless, because OPR has no jurisdiction over contractors who work on projects worth \$10,000 or less, this individual was always free to operate in the marketplace on projects under the monetary threshold.

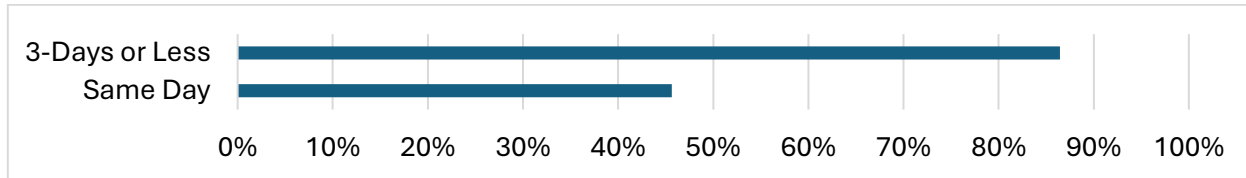


Figure 1: Registration application processing times.

Regulatory Financial Costs

It is estimated that the standup costs associated with regulating residential contractors total nearly \$175,000. This primarily includes the developer costs for building new software infrastructure in OPR's licensing platform, but also includes OPR staff time for outreach, training and other preparations. This figure does not include the legal and legislative efforts which spanned over 5 years to enact the residential home contractor registration.

In almost 18 months since the launch of residential contractor registration, OPR received \$215,325 in licensing fee revenue from residential contractor businesses and individual residential contractors (\$184,555 and \$30,770, respectively). The residential contractor profession is part of the advisor fund at OPR wherein the costs of regulation, including enforcement actions, are shared as if a single board.

Resources for Professionals and Consumers

The Office of Professional Regulation currently provides a webpage for consumers in need of residential contractor services.³ This page includes homeowner resources to find and vet a residential contractor, including an interactive map which shows the location of all Vermont's actively registered residential contractors and businesses. This webpage also provides explanations of OPR's regulatory jurisdiction, the Attorney General's Consumer Assistance Program, the Better Business Bureau, and the roles of law enforcement and small claims court.

Lastly, OPR provides explanations of the rules and regulations, a sample contract for review by professionals and the public alike, as well as links to the Department of Fire Safety in the event that consumers are looking for trade services outside OPR's regulatory umbrella.

Additional Efforts

The Office of Professional Regulation is currently working on multiple levels to implement legislation relating to residential contractors:

- Rulemaking for contractor registrations and initial voluntary certifications, which will include OSHA standards and energy-efficiency building;
- Stakeholder engagement throughout the rulemaking process;

³ <https://sos.vermont.gov/residential-contractors/homeowner-resources/>

- Identifying Certification bodies and standards.

OPR anticipates filing these rules early in 2025.

Additionally, Act 151 imposed various requirements on OPR which have been implemented or which are in the process of being implemented. The residential contractor registration applications are in the process of being revised to include the geographic area in which the registrant works, as well as trade services offered. OPR has revised residential contractor applications to include an acknowledgement that the applicant must comply with 30 V.S.A. § 51 (RBES) and 30 V.S.A. § 53 (CBES). OPR also revised the sample contract on its website to include an acknowledgement that the contractor must comply with residential building energy standards in 30 V.S.A. § 51 and commercial building energy standards in 30 V.S.A. § 53.

OPR actively participates in multiple working groups focused on State energy codes and building code compliance. OPR continues to collaborate with stakeholder groups and other state agencies in furtherance of state energy goals and development of the contractor profession.

Conclusions

Vermont consumers would benefit from greater protection against residential contractor fraud. Currently, consumer fraud protection is limited by OPR's inability to completely remove fraudulent contractors from the market. Additionally, Vermonters would benefit from a residential building safety code. Currently, no agency has jurisdiction over safety standards for single family homes. Residential safety standards would be most effectively regulated through proactive code enforcement (i.e., permitted projects with mandatory inspections) rather than reactively through OPR's complaint driven enforcement process. However, OPR's professional conduct enforcement model is an effective approach in expanding the public's protection against both fraudulent and otherwise unscrupulous home contractors.