

LICENSING REQUIREMENTS FOR A HOME SERVICE CONTRACT PROVIDER

INTRODUCTION

No person shall act as a home service contract provider with a resident of this Commonwealth without first obtaining a license from the Bureau of Insurance (Bureau). To be considered for a license, an applicant must submit a completed *Application for Initial License as a Home Service Contract Provider* to the Bureau's Financial Regulation Division pursuant to **Article 2, Chapter 26 of Title 38.2** of the Code of Virginia.

The following information may be useful to the reader in reviewing the requirements:

Home service contract means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance, for the operational failure of any components, parts, appliances, or systems of any covered residential dwelling due to a defect in materials, workmanship, inherent defect, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances. Home service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or interruption and accidental damage from handling and may provide roof leak coverage. Home service contracts are not insurance in the Commonwealth and shall not be subject to the provisions of **Title 38.2** except as specifically provided in **Article 2 of Chapter 26**.

Provider means a person who is contractually obligated to the home service contract holder under the terms of the home service contract.

Person means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate or any similar entity or combination of entities acting in concert.

Reimbursement insurance policy means a policy of insurance issued to a provider to provide reimbursement to the provider under the terms of the insured home service contracts issued or sold by the provider and, in the event of the provider's nonperformance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured home service contracts issued or sold by the provider. An insurer that issued a reimbursement insurance policy shall not terminate the policy until a notice of termination in accordance with § **38.2-231** has been mailed or delivered to the Commission. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for home service contracts issued by providers prior to the date of the termination.

Investments of a home service contract provider are defined in and shall be subject to the provisions of **Chapter 14 of Title 38.2**. (Note: A *non-resident* provider whose investments are subject to regulation under the laws of its domiciliary jurisdiction shall not be subject to the provisions of **Chapter 14**. See § **38.2-1400**.)

GENERAL LICENSING STANDARDS

No license shall be issued to a home service contract provider unless the applicant:

1. Has submitted with its application a non-refundable application fee of \$1,000 payable to the Treasurer of Virginia.
2. If a resident partnership, limited liability company, or corporation, has recorded the existence of the partnership, limited liability company or corporation pursuant to the appropriate provisions of [Title 13.1](#) (Corporations) or [Title 50](#) (Partnerships) of the Code of Virginia *prior* to filing a license application. If a non-resident partnership, limited liability company or corporation, the applicant shall furnish proof of its authority to transact business in Virginia under [Title 13.1](#) or [Title 50](#). A non-resident applicant may defer this requirement until after it has been notified that its license application has been tentatively approved by the Bureau (see **Section II** of Application for Initial License as a Home Service Contract Provider). Registration under either [Title 13.1](#) or [Title 50](#) is accomplished by securing instructions from and filing the necessary documents with the Clerk of the Virginia State Corporation Commission (Clerk's Office) at www.scc.virginia.gov/clk, (804) 371-9733.
3. Maintains a net worth in an amount not less than 20% of the consideration charged on its contracts currently in force; however, the minimum required net worth shall be not less than \$100,000, and the maximum required net worth shall be that amount required of insurers under the provisions of **Article 5** (§§ [38.2-1024 through 38.2-1039.1](#)) of **Chapter 10 of Title 38.2**.
4. Pursuant to § [38.2-2619 D 3](#), deposits with the State Treasurer a financial security deposit of the type permitted by **Chapter 45** (§ [2.2-4500 et seq.](#)) of **Title 2.2** of the Code of Virginia. The deposit shall have a value of at least 5% of the gross consideration received on the sale of the home service contract for all home service contracts issued and in force, but not less than \$25,000 or more than \$250,000. *The amount of the initial deposit will be determined by the Bureau after its review of the license application has been completed and the Bureau has tentatively approved the applicant for licensure* (see **Section II** of Application for Initial License as a Home Service Contract Provider).
5. Has filed any financial statement and any reports, certificates, or other documents as the Bureau deems necessary to secure a full and accurate knowledge of its affairs and financial condition.
6. Pursuant to § [38.2-2619 E](#), has complied with one of the following:
 - A. Insures all home service contracts under a reimbursement insurance policy issued by an insurer licensed, registered, or otherwise authorized to do business in the Commonwealth, whereby the insurer:
 - (i) At the time the reimbursement insurance policy is filed with the Commission, and continuously thereafter, maintains surplus as to policyholders of at least \$15 million and annually files copies of its audited financial statements, its National Association of Insurance Commissioners Annual Statement, and the actuarial certification required by and filed in the insurer's state of domicile; or

- (ii) At the time the reimbursement insurance policy is filed with the Commission, and continuously thereafter, maintains surplus as to policyholders of less than \$15 million but at least equal to \$10 million, demonstrates to the satisfaction of the Commission that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders of not greater than 3 to 1, and annually files copies of its audited financial statements, its National Association of Insurance Commissioners Annual Statement, and the actuarial certification required by and filed in the insurer's state of domicile.
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- A. Maintains a funded reserve account sufficient to provide for its obligations under its contracts issued and outstanding in this Commonwealth. The reserves shall not be less than 40% of gross consideration received, less claims paid, on the sale of the home service contract for all in-force contracts. This reserve account shall be certified by the company along with reasonable documentation thereof. The reserve account shall be subject to examination and review by the Commission; or
 - B. Maintains, with its parent company, a net worth or stockholders' equity of at least \$100 million and upon request, provides the Commission with a copy of the provider's parent company's most recent Form 10-K or similar document filed with the federal Securities and Exchange Commission within the last calendar year, or if the company does not file with the federal Securities and Exchange Commission, a copy of the company's audited financial statements, which shows a net worth of the provider's parent company of at least \$100 million. If the provider's parent company's federal Securities and Exchange Commission filing or financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the provider relating to home service contracts sold by the provider in this Commonwealth.

BUREAU CONTACT

License applicants should direct all questions regarding the requirements for licensing home service contract providers to the following:

James B. Ware
Senior Insurance Financial Analyst
State Corporation Commission
Bureau of Insurance
P. O. Box 1157
Richmond, VA 23218

Telephone: (804) 371-9801
Facsimile: (804) 371-9511
Email: jim.ware@scc.virginia.gov

An applicant desiring a personal meeting with Bureau staff prior to filing an application may contact the person above in order to schedule an appointment.

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APPLICATION FOR INITIAL LICENSE AS A HOME SERVICE CONTRACT PROVIDER

ARTICLE 2, CHAPTER 26 OF TITLE 38.2 OF THE CODE OF VIRGINIA

(Please read these instructions completely before filing an application.)

(All citations to the insurance statutes of Virginia are in Title 38.2 of the Virginia Code)

Section I. Initial Review Documents and Disclosure

In its initial application, an applicant for a license as a home service contract provider must submit or disclose the following:

1. Non-refundable Application Fee of \$1,000.
2. Name of Applicant _____
3. DBA/Trade, Assumed or Fictitious Name (if applicable) _____
4. Street Address of Applicant _____

5. Mailing Address _____

6. Internet Website Address _____
7. Organizational Structure (Date of Incorporation/Formation _____)
____ Corporation ____ Limited Liability Company ____ Partnership
____ Other: Identify/Explain _____
8. State of Domicile _____
9. Federal Employee Identification Number _____
10. Contact Person _____
Title _____
Telephone _____
Fax Number _____
Email _____
11. A copy of the applicant's organizational documents (e.g., articles of incorporation).
12. Disclose all aspects of ownership and control with regard to the applicant, and submit an organizational chart which depicts the affiliation between the applicant and any other entities. As used herein, "affiliation" means a person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person. "Control" shall be

presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing collectively 10% or more of the voting securities of any other person.

13. A description of the applicant's plan of operation and manner of doing business. The description should address such areas as marketing methods and systems, contract administration, claims handling, and dispute resolution.
14. For a *non-resident* applicant already doing business as a home service contract provider in one or more other jurisdictions, a financial statement *using the form prescribed by the Bureau*. To be acceptable in Virginia, (i) the statement must reflect the applicant's financial position no earlier than as of December 31 of the previous year, and (ii) the statement must be prepared using the quarterly Property/Casualty convention blank developed by the National Association of Insurance Commissioners (NAIC). The statement shall be prepared in accordance with the quarterly financial statement instructions and Statutory Accounting Practices and Procedures adopted by the NAIC. The quarterly blank, the instructions for the blank, and the Accounting Practices and Procedures may be acquired from the NAIC at http://www.naic.org/store_home.htm.
15. For a *non-resident* applicant whose domiciliary jurisdiction does not regulate the investments of home service contract providers in accordance with the laws of that jurisdiction, a completed Analysis of Excess Capital and Surplus Investments Report. The Report form is available online at:

<http://www.scc.virginia.gov/division/boi/webpages/inspagedocs/frr01.pdf>.

If the applicant believes that its investments are subject to regulation under the laws of its domiciliary jurisdiction, please provide a copy of the applicable statute or the internet address of the appropriate statutory citation.
16. If a *non-resident* applicant has undergone an examination by its domiciliary regulatory authorities within the past five year period, a copy of the applicant's most recent Report on Examination.
17. For a *non-resident* applicant, its most recent audited financial report.
18. For a newly-formed *resident* applicant, pro forma financial statements (balance sheet and income statement) through at least three years. The statements must be prepared in accordance with the Statutory Accounting Practices and Procedures adopted by the NAIC, and be based on reasonable assumptions clearly disclosed and included with the statements. The statements must be consistent with the applicable financial security provisions provided by **subsections D and E of § 38.2-2619**.
19. A properly executed biographical affidavit for each of the applicant's officers and directors using the standard NAIC Biographical Affidavit form. The affidavit must be current and shall not be signed by the affiant more than one year prior to the date the license application is filed. In addition, the disclosures contained in each affidavit must be supported by a Biographical Verification Report (a.k.a "background investigation") performed by an independent third party. An independent third party is one that has no affiliation with the applicant and is in the business of providing background investigations. The NAIC affidavit form and information regarding the background investigations and third party vendors are available online at http://www.naic.org/industry_ucaa.htm.
20. For the home service contracts the applicant wishes to sell in Virginia, information regarding the terms and conditions that the applicant proposes to offer with respect to contract cancellation and the possibility of prorated refunds of premiums.

21. For an applicant that will operate under the financial security option provided by § 38.2-2619 E 1, a copy of the reimbursement policy issued by an insurer licensed, registered or otherwise authorized to do business in Virginia. For an applicant choosing the option provided by § 38.2-2619 E 3, a copy of the financial reports of the applicant and/or its parent company that evidence compliance with this option.

NOTARIAL ACKNOWLEDGMENT REQUIRED OF ALL APPLICANTS

Dated and signed this _____ day of _____, 20____ at _____.
_____ being duly sworn according to law, deposes and says that the answers to the questions and the declarations contained in this application are true and correct.

Signature of the President/CEO
of the Provider

Full Legal Name of the Provider
(Type or Print)

State of _____

City/County of _____

Personally appeared before me the above named _____
personally known to me, who, being duly sworn, deposes and says that he/she executed the above instrument and that the statements and answers contained therein are true and correct to the best of his/her knowledge and belief.

Subscribed and sworn to before me this _____ day of _____, 20_____.

(SEAL)

Notary Public

My Commission Expires: _____

It is the intent of the Bureau to process all applications in a timely manner. When necessary, the Bureau will contact the applicant regarding the need for any additional information in order to continue and complete the review process. Failure by the applicant to respond adequately to requests for such additional information within a reasonable timeframe, or failure to demonstrate an ability to comply with the licensing standards prescribed by law, will be grounds for denial of the application.

If the Bureau concludes that the applicant is a qualified candidate for licensure pursuant to **Article 2 of Chapter 26**, it will issue a letter of tentative approval directing the applicant to complete the remaining requirements for licensure in Section II below.

Section II. Tentative Approval

1. A *non-resident* partnership, limited liability company or corporation that has not already registered pursuant to either **Title 13.1** (Corporations) or **Title 50** (Partnerships) shall be instructed to do so at this time. The applicant must make appropriate filings with the Clerk's Office to (i) properly record its existence in accordance with the Code of Virginia, and (ii) designate a resident of Virginia as agent for service of process. For filing instructions and forms, the applicant may contact the Clerk's Office at www.scc.virginia.gov/clk or at (804) 371-9733.
2. Providers are subject to premium license taxation pursuant to the provisions of **Chapter 25** (§ **58.1-2500 et seq.**) of **Title 58.1**. Section **58.1-2504** requires a company to pay the license tax prior to receiving its license. Accordingly, an applicant must file an Estimated Premium License Tax Report using the form that the Bureau will provide with the letter of tentative approval. Provider fees collected on home service contracts shall be subject to premium taxes of two and one-fourth percent of such provider fees, consistent with the calculation of license taxes for Fire, Casualty, and Title insurance companies. The premium taxes paid by providers pursuant to this subsection shall be in lieu of all other state and local license fees or license taxes and state income taxes of the provider.
3. An applicant will be directed to make the security deposit required by § **38.2-2619 D 3**. The deposit shall have a value of at least 5% of the gross consideration received on the sale of the home service contract for all home service contracts issued and in force, but not less than \$25,000 or more than \$250,000. Acceptable securities for deposit are those permitted by **Chapter 45** (§ **2.2-4500 et seq.**) of **Title 2.2**.
4. Any other reports, certificates, or documents necessary in order to license the applicant as a home service contract provider.