

Chapter 75

RESIDENTIAL SOLICITATION

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75-1 Title.

This Chapter shall be known and may be cited as the “Residential Solicitation Law” and shall apply to the Village of South Blooming Grove, New York (the “Village”). This Chapter replaces and supersedes the former Chapter 75, entitled “Peddling and Soliciting”.

75-2 Legislative Purpose and Authority.

Residents of the Village have an inalienable interest in their personal safety, comfort, well-being, and privacy in their residences as well as their ability to provide and receive information regarding matters of personal belief, political or charitable activities, and goods and services lawfully in commerce.

The Village has a substantial interest in protecting the well-being, tranquility, personal safety, and privacy of its residents, which includes protecting residents from unwanted, harassing, and disruptive intrusions and solicitations upon residential property. The Village also has a substantial interest in protecting residents from fraudulent, misleading, or otherwise unfair consumer sales practices, deceptive door-to-door solicitations, and criminal activity.

There must be a balance between these substantial interests of the Village and its residents and the effect of the regulations in this Chapter on any rights of those regulated. Based on the collective experiences derived from regulating business activity, protecting persons and property from criminal conduct, responding to the inquiries and complaints of residents regarding door-to-door and in-home canvassing and solicitation, the experience of its law enforcement officers and those affected by door-to-door and in-home canvassing and solicitation, as well as judicial decisions outlining the boundaries of constitutional protections afforded and denied persons seeking to engage in door-to-door and in-home canvassing and solicitation, the Village adopts this Chapter to promote the Village’s substantial interests in:

- A. Respecting residents’ decisions regarding privacy in their residences;
- B. Protecting persons from criminal conduct;
- C. Providing equal opportunity to advocate for and against religious belief, political position, or charitable activities; and
- D. Permitting truthful, non-fraudulent, and non-misleading door-to-door solicitation regarding lawful goods or services in intrastate or interstate commerce that does not violate the property rights of any property owner or resident in the Village.

The Village finds that the procedures, rules, and regulations set forth in this Chapter are appropriately and narrowly tailored to preserve and protect the Village interests referred to herein while at the same time balancing the rights of those regulated.

This Chapter is authorized by the New York State Constitution Article IX, § 2, the provisions of the New York Municipal Home Rule Law, and the provisions of the Statute of Local Governments.

75-3 No other Village license or approval required.

- A. Persons exempt from registration need not apply for, nor obtain, any other license, permit, or registration from the Village to engage in door-to-door solicitation.
- B. Any business licensed by the Village under another Village ordinance that uses employees, independent contractors, or agents for door-to-door solicitation in an effort to provide any tangible or intangible benefit to the business, shall be required to have such solicitors obtain a certificate unless otherwise exempt from registration.
- C. Those responsible persons or entities associated with registered solicitors need not apply for, nor obtain, any other license, permit, or registration from the Village, provided they do not establish a temporary or fixed place of business in the village.
- D. Nothing herein is intended to interfere with or supplant any other requirement of State or Federal law regarding any license, permit, or certificate that a registered solicitor is otherwise required to have or maintain.

75-4 Definitions.

For the purposes of this chapter, the following definitions shall apply:

- A. “Advocating” means speech or conduct intended to inform, promote, or support religious belief, political position, or charitable activities.
- B. “Appeals officer” means the Village Board of Trustees or designee of the Village responsible for receiving the information from the Village and appellant regarding the denial or suspension of a certificate and issuing a decision as required by this chapter.
- C. “Appellant” means the person or entity appealing the denial or suspension of a certificate, either personally as an applicant or registered solicitor, or on behalf of the applicant or registered solicitor.
- D. “Applicant” means an individual who is at least sixteen years of age and not a corporation, partnership, limited liability company, or other lawful entity who applies for a certificate permitting door-to-door solicitation.
- E. “Application form” means a standardized form provided by the Village to an applicant to be completed and submitted as part of registration.
- F. “BCI” means an original or copy, dated no older than one hundred eighty days prior to the date of the application, of either: (1) a New York State Bureau of Criminal Identification verified criminal history report personal to the applicant; or (2) verification by the New York State Bureau of Criminal Identification that no criminal history rising to the level of a disqualifying status exists for the applicant.
- G. “Business” means a commercial enterprise licensed by the Village as a person or entity under this title, having a fixed or temporary physical location within the village.
- H. “Certificate” means a temporary, annual, or renewal certificate permitting door-to-door solicitation in the village applied for or issued pursuant to the terms of this chapter.

I. "Charitable activities" means advocating by persons or entities that either are, or support, a charitable organization.

J. "Charitable organization" includes any person, joint venture, partnership, limited liability company, corporation, association, group, or other entity:

1. That is:
 - a. A benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary, social welfare or advocacy, public health, environmental or conservation, or civic organization;
 - b. For the benefit of a public safety, law enforcement, or firefighter fraternal association; or
 - c. Established for any charitable purpose; and
2. That is tax exempt under applicable provisions of the Internal Revenue Code of 1986 as amended, and qualified to solicit and receive tax deductible contributions from the public for charitable purposes.
3. "Charitable organization" includes a chapter, branch, area, or office, or similar affiliate or any person soliciting contributions within the state for a charitable organization that has its principal place of business outside the Village or State of New York.

K. "Competent individual" means a person claiming or appearing to be at least eighteen years of age and of sufficiently sound mind and body to be able to engage in rational thought, conversation, and conduct.

L. "Completed application" means a fully completed application form, a BCI, two copies of the original identification relied on by the applicant to establish proof of identity, and the tendering of fees.

M. "Criminally convicted" means the final entry of a conviction, whether by a plea of no contest, guilty, entry of a judicial or jury finding of guilt, which has not been set aside on appeal or pursuant to a writ of habeas corpus. The criminal conviction is that offense of which the applicant or registered solicitor was convicted, without regard to the reduced status of the charge after completion of conditions of probation or parole, and charges dismissed under a plea in abeyance or diversion agreement.

N. "Disqualifying status" means anything specifically defined in this chapter as requiring the denial or suspension of a certificate, and any of the following:

1. The applicant or registered solicitor has been criminally convicted of:
 - a. Felony homicide;
 - b. Physically abusing, sexually abusing, or exploiting a minor;
 - c. The sale or distribution of controlled substances; or
 - d. Sexual assault of any kind.

2. Criminal charges currently pending against the applicant or registered solicitor for:
 - a. Felony homicide;
 - b. Physically abusing, sexually abusing, or exploiting a minor;
 - c. The sale or distribution of controlled substances; or
 - d. Sexual assault of any kind.
3. The applicant or registered solicitor has been criminally convicted of a felony within the last ten years;
4. The applicant or registered solicitor has been incarcerated in a federal or state prison within the past five years;
5. The applicant or registered solicitor has been criminally convicted of a misdemeanor within the past five years involving a crime of:
 - a. Moral turpitude; or
 - b. Violent or aggravated conduct involving persons or property.
6. A final civil judgment has been entered against the applicant or registered solicitor within the last five years indicating that:
 - a. The applicant or registered solicitor had either engaged in fraud or intentional misrepresentation; or
 - b. That a debt of the applicant or registered solicitor was non-dischargeable in bankruptcy pursuant to 11 U.S.C. Section 523(a)(2), (a)(4), (a)(6) or (a)(19);
7. The applicant or registered solicitor is currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device;
8. The applicant or registered solicitor has an outstanding arrest warrant from any jurisdiction; or
9. The applicant or registered solicitor is currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.

O. "Door-to-door solicitation" means the practice of engaging in or attempting to engage in conversation with any person at a residence, whether or not that person is a competent individual, while making or seeking to make or facilitate a home solicitation sale, or attempting to further the sale of goods and or services.

P. "Entity" includes a corporation, partnership, limited liability company, or other lawful entity, organization, society or association.

Q. "Fees" means the cost charged to the applicant or registered solicitor for the issuance of a certificate and/or identification badge, which shall not exceed the reasonable costs of processing the application and issuing the certificate and/or identification badge.

R. "Final civil judgment" means a civil judgment that would be recognized under state law as a judgment to which collateral estoppel would apply.

S. "Goods" means one or more tangible items, wares, objects of merchandise, perishables of any kind, subscriptions, or manufactured products offered, provided, or sold.

T. "Home solicitation sale" means to make or attempt to make a sale of goods or services by a solicitor at a residence by means of door-to-door solicitation, regardless of:

1. The means of payment or consideration used for the purchase;
2. The time of delivery of the goods or services; or
3. The previous or present classification of the Solicitor as a solicitor, peddler, hawker, itinerant merchant, or similar designation.

U. "Licensing officer" means the Village employee or designee responsible for receiving from an applicant or registered solicitor the completed application and either granting, suspending, or denying the applicant's certificate.

V. "No solicitation sign" means a reasonably visible and legible sign that states "No Soliciting" or "No Solicitors" or "No Salespersons" or "No Trespassing," or words of similar import.

W. "Political position" means any actually held belief or information for, against, or in conjunction with any political, social, environmental, or humanitarian belief or practice.

X. "Registered solicitor" means any person who has been issued a current certificate by the Village.

Y. "Registration" means the process used by the Village licensing officer to accept a completed application and determine whether or not a certificate will be denied, granted, or suspended.

Z. "Religious belief" means any sincerely held belief or information for, against, or in conjunction with, any theistic, agnostic, or atheistic assumption, presumption or position, or religious doctrine, dogma, or practice regardless of whether or not the belief or information is endorsed by any other person or public or private entity.

AA. "Residence" means any living unit contained within any building or structure that is occupied by any person as a dwelling consistent with the zoning laws of the Village, together with the lot or other real property on which the living unit is located. This does not include the sidewalk, public street or public rights-of-way.

BB. "Responsible person or entity" means that person or entity responsible to provide the following to an applicant, registered solicitor, and the competent individual in a residence to whom a sale of goods or services is made or attempted to be made by means of a home solicitation sale:

1. Maintaining a state sales tax number, a special events sales tax number, computing the sales taxes owing from any sale of goods or services, paying the sales taxes, and filing any required returns or reports;
2. Facilitating and responding to requests from consumers who desire to cancel the sale pursuant to applicable contractual rights or law; and
3. Refunding any monies paid or reversing credit card charges to those persons who timely rescind any sale pursuant to applicable contractual rights or law.

CC. "Sale of goods or services" means the conduct and agreement of a solicitor and the competent individual in a residence regarding a particular good(s) or service(s) that entitles the consumer to rescind the same within three days under any applicable federal, state, or local law.

DD. "Services" means those intangible goods or personal benefits offered, provided, or sold to a competent individual of a residence.

EE. "Soliciting" or "solicit" or "solicitation" means any of the following activities:

1. Seeking to obtain sales or orders for the exchange of goods, wares, merchandise or perishables of any kind, for any kind of remuneration or consideration, regardless of whether advance payment is sought;
2. Seeking to obtain prospective customers to apply for or to purchase insurance, subscriptions to publications, or publications;
3. Seeking to obtain contributions of money or any other thing of value for the benefit of any person or entity;
4. Seeking to obtain orders or prospective customers for goods or services;
5. Seeking to engage an individual in conversation at a residence for the purpose of promoting or facilitating the receipt of information regarding home solicitation sale or purchase; and
6. Other activities falling within the commonly accepted definition of soliciting, such as canvassing, hawking, or peddling.

FF. "Solicitor" or "solicitors" means a person(s) engaged in door-to-door solicitation.

GG. "Submitted in writing" means the information for an appeal of a denial or suspension of a certificate, submitted in any type of written statement to the Village offices by certified, registered, priority, overnight or delivery confirmation mail, facsimile, or hand delivery.

HH. "Substantiated report" means an oral, written, or electronic report:

1. That is submitted to and documented by the Village;
2. By any of the following:

- a. A competent individual who is willing to provide law enforcement or other village employees with publicly available identification of their name, address, and any other reliable means of contact;
 - b. Village law enforcement or licensing officer; or
 - c. Any other regularly established law enforcement agency at any level of government;
3. That provides any of the following information regarding a registered solicitor:
- a. Documented verification of a previously undisclosed disqualifying status of a registered solicitor;
 - b. Probable cause that the registered solicitor has committed a disqualifying status which has not yet been determined to be a disqualifying status;
 - c. Documented, eye-witness accounts that the registered solicitor has engaged in repeated patterns of behavior that demonstrates failure by the registered solicitor to adhere to the requirements of this chapter; or
 - d. Reasonable cause that continued licensing of the registered solicitor creates exigent circumstances that threaten the peace, health, safety, or general welfare of any individuals or entities within the Village.

II. "Waiver" means the written form provided to the applicant by the Village wherein the applicant agrees that the Village may obtain a name/date of birth BCI background check on the applicant for licensing purposes under this chapter, and which contains applicant's notarized signature.

75-5 Exemptions from chapter.

The following are exempt from registration under this chapter:

- A. Persons specifically invited to a residence by a competent individual prior to the time of the person's arrival at the residence;
- B. Persons soliciting in good faith for the benefit of any bona fide fraternal, educational, religious, or charitable organization shall have otherwise been certified or otherwise been duly qualified as required by law or by any competent governmental body or agency;
- C. Persons delivering goods to a residence pursuant to a previously made order, or persons providing services at a residence pursuant to a previously made request by a competent individual;
- D. Persons advocating or disseminating information for, against, or in conjunction with, any religious belief or political position regardless of whether goods, services, or any other consideration is offered or given, with or without any form of commitment, contribution, donation, pledge, or purchase; and
- E. Persons representing a charitable organization. The charitable exemption shall apply to students soliciting contributions to finance extracurricular social, athletic, artistic, scientific or cultural programs; provided, that the

solicitation has been approved in writing by the school administration, and that such student solicitors carry current picture student identification from the educational institution for which they are soliciting.

F. All persons and organizations soliciting funds solely for the charitable or other purposes who are exempted from the license requirements under this chapter shall maintain and keep records identifying all persons soliciting funds within the Village, and such records shall contain at least the name and the address of the person soliciting, the areas solicited and the date or dates of solicitation. Said records shall be made available for inspection by the Chief of Police upon request.

75-6 Solicitation prohibited.

Unless otherwise authorized, permitted, or exempted pursuant to the terms and provisions of this Chapter, the practice of being in and upon a private residence within the Village by solicitors, for the purpose of home solicitation sales or to provide goods or services, is prohibited and is punishable as set forth in this Chapter.

Additionally, no person shall engage in the following acts within the Village:

- A. Promote, influence, or attempt to promote or influence a property owner, occupant, or tenant to list for sale, sell, or remove from a lease real property by referring to race, color, sexual orientation, ethnicity, or religious affiliation of neighbors, prospective buyers or other occupants or prospective occupants of real property.
- B. Induce directly or indirectly, or attempt to induce directly or indirectly, the sale or listing for sale of real property by representing that the presence or anticipated presence of persons of any particular race, religion, or national origin in the area has resulted in or may result in:
 - (1) The lowering of property values
 - (2) A change in the racial, religious, or ethnic composition of the block, neighborhood, or area in which the property is located.
 - (3) An increase in criminal or antisocial behavior in the area.
 - (4) A decline in the quality of the schools serving the area.
- C. Make any representation or misrepresentation concerning the listing or sale of the anticipated listing for sale or the sale of any real property in any residentially zoned areas for the purpose of inducing or attempting to induce the sale or listing for sale of other real property in such area.
- D. Make any representation to any prospective purchaser that any block, neighborhood or area has, will or might undergo an adverse change with respect to the religious, racial, or ethnic composition of the block, neighborhood or area for the purpose of discouraging the purchase of property in a particular area.
- E. Place, canvass, distribute, or otherwise deliver any letter, sign, note, pamphlet, advertisement, flyer, leaflet, placard, or other written material, to or upon a private residence purporting an offer for sale or purchase for any property that is not in fact offered for sale by the owner of said property.

- F. Advertise for sale or rental property which is non-existent or which is not actually for sale or rental.
- G. Engage in or hire or conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, create or play upon unjustified fear with the purpose of inducing or attempting to induce the sale or listing for sale of real property.
- H. Solicit or canvass any person whose name and property address is included on the list maintained by the Village Clerk of persons requesting that they not be canvassed or solicited.
- I. To engage in any economic reprisal or any other form of intimidation against any person because that person has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or conference under the terms of this article.
- J. To aid, abet, incite, compel or coerce any person to engage in any of the practices forbidden by this article or to obstruct or prevent any person from complying with the provisions of this article.
- K. Refer, directly or indirectly or by implication, to race, color, creed, ethnicity, or sexual orientation in any advertisement or other solicitation offering real property for sale or rental.
- L. Solicit or attempt to solicit the sale or rental or the listing for sale or rental of real property without furnishing in written form to the owner or occupier of such real property the name of the person or organization soliciting such sale, rental or listing.
- M. Enter upon real property in violation of Section 75-18.

75-7 Registration of solicitors.

Unless otherwise exempt under this Chapter, all persons desiring to engage in door-to-door solicitation within the Village, prior to doing so, shall submit a completed application to the licensing officer and obtain a certificate.

75-8 Application form.

The licensing officer shall provide a standard application form for use for the registration of solicitors. Upon request to the licensing officer, or as otherwise provided, any person or entity may obtain in person, by mail, or facsimile, a copy of this application form. Each application form shall require disclosure and reporting by the applicant of the following information, documentation, and fee:

- A. Review of Written Disclosures. An affirmation that the applicant has received and reviewed the disclosure information required by this chapter.
- B. Contact Information.
 - 1. Applicant's true, correct and legal name, including any former names or aliases used during the last ten years;
 - 2. Applicant's telephone number, home address and mailing address, if different;

3. If different from the applicant, the name, address, and telephone number of the responsible person or entity; and

4. The address by which all notices to the applicant required under this chapter are to be sent.

C. Proof of Identity. An in-person verification by the licensing officer of the applicant's true identity by use of any of the following which bear a photograph of said applicant:

1. A valid driver's license issued by any state;

2. A valid passport issued by the United States;

3. A valid identification card issued by any state; or

4. A valid identification issued by a branch of the United States military.

Upon verification of identity, the original identification submitted to establish proof of identity shall be returned to the applicant.

D. Proof of Registration. The applicant shall provide proof that either the applicant, or the responsible person or entity, has registered with all required regulatory authorities;

E. Sales Tax Number. The applicant shall provide a sales tax number for either the applicant, or for the responsible person or entity for which the applicant will be soliciting;

F. Marketing Information.

1. The goods or services offered by the applicant, including any commonly known, registered or trademarked names;

2. Whether the applicant holds any other licenses, permits, registrations, or other qualifications required by federal or state law to promote, provide, or render advice regarding the offered goods or services.

G. BCI Background Check. The applicant shall provide:

1. An original or a copy of a BCI background check

2. A signed copy of a waiver whereby applicant agrees to allow the Village to obtain a name/date of birth BCI background check on applicant for purposes of enforcement of this Chapter.

H. Responses to Questions Regarding "Disqualifying Status." The applicant shall be required to affirm or deny each of the following statements on the application form:

1. Has the applicant been criminally convicted of:

a. Felony homicide;

b. Physically abusing, sexually abusing, or exploiting a minor;

- c. The sale or distribution of controlled substances; or
 - d. Sexual assault of any kind.
2. Are any criminal charges currently pending against the applicant for:
 - a. Felony homicide;
 - b. Physically abusing, sexually abusing, or exploiting a minor;
 - c. The sale or distribution of controlled substances; or
 - d. Sexual assault of any kind.
 3. Has the applicant been criminally convicted of a felony within the last ten years;
 4. Has the applicant been incarcerated in a federal or state prison within the past five years;
 5. Has the applicant been criminally convicted of a misdemeanor within the past five years involving a crime of:
 - a. Moral turpitude; or
 - b. Violent or aggravated conduct involving persons or property.
 6. Has a final civil judgment been entered against the applicant within the last five years indicating that:
 - a. The applicant had either engaged in fraud or intentional misrepresentation; or
 - b. That a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. Section 523(a)(2), (a)(4), (a)(6) or (a)(19);
 7. Is the applicant currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device;
 8. Does the applicant have an outstanding arrest warrant from any jurisdiction; or
 9. Is the applicant currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.

I. Fee. The applicant shall pay such fees as determined applicable by the Village, which shall not exceed the reasonable cost of processing the application and issuing the certificate and/or identification badge.

J. Execution of Application. The applicant shall execute the application form, stating upon oath or affirmation, under penalty of perjury, that based on the present knowledge and belief of the Applicant, the information provided is complete, truthful and accurate.

75-9 Written disclosures.

The application form shall be accompanied by written disclosures notifying the applicant of the following:

- A. The applicant's submission of the application authorizes the Village to verify information submitted with the completed application including:
 - 1. The applicant's address;
 - 2. The applicant's and/or responsible person or entity's state tax identification and special use tax numbers, if any;
 - 3. The validity of the applicant's proof of identity;
- B. The Village may consult any publicly available sources for information on the applicant, including but not limited to databases for any outstanding warrants, protective orders, or civil judgments;
- C. Establishing proof of identity is required before registration is allowed;
- D. Identification of the fee amount that must be submitted by applicant with a completed application;
- E. The applicant must submit a BCI background check with a completed application;
- F. To the extent permitted by state and/or federal law, the applicant's BCI background check shall remain a confidential, protected, private record not available for public inspection;
- G. The Village will maintain copies of the applicant's application form, proof of identity, and identification badge. These copies will become public records available for inspection on demand at the village offices whether or not a certificate is denied, granted, or renewed;
- H. The criteria for disqualifying status, denial, or suspension of a certificate under the provisions of this chapter;
- I. That a request for a temporary certificate will be granted or denied the same business day that a completed application is submitted.

75-10 When registration begins.

The licensing officer shall not begin the registration process unless the applicant has submitted a completed application. The original identification submitted to establish proof of identity shall be returned after the licensing officer verifies the applicant's identity. A copy of the identification may be retained by the licensing officer. If an original BCI background check is submitted by the applicant, the licensing officer shall make a copy of the BCI and return the original to the applicant.

75-11 Issuance of certificates.

The licensing officer shall review the completed application submitted by the applicant and issue a certificate in accordance with the following:

- A. Temporary Certificate.
 - 1. A temporary certificate shall issue allowing the applicant to immediately begin door-to-door solicitation upon the following conditions:

- a. Applicant's submission of a completed application;
- b. Applicant's submission of the required fee;
- c. Applicant establishes proof of identity;
- d. The applicant's representations on the application form do not affirmatively show a disqualifying status;
- e. The BCI does not affirmatively show a disqualifying status; and
- f. The applicant has not previously been denied a certificate by the village or had a certificate revoked for grounds that still constitute a disqualifying status under this chapter.

2. A temporary certificate will automatically expire after twenty-five calendar days from issuance, or upon grant or denial of an annual certificate, whichever period is shorter.

B. Annual Certificate. Within twenty-five calendar days of the issuance of a temporary certificate the Village shall:

1. Take any and all actions it deems appropriate to verify the truthfulness and completeness of the information submitted by the applicant, including but not limited to those disclosed with the application form.
2. Issue written notice to the applicant and the responsible person or entity, if any, that the applicant either:
 - a. Will be issued an annual certificate, eligible for renewal one year from the date of issuance of the temporary certificate; or
 - b. Will not be issued an annual certificate for reasons cited in Section 75-15.

C. Renewal Certificate. An annual certificate shall be valid for one year from the date of issuance of the temporary certificate and shall expire at midnight on the anniversary date of issuance. Any annual certificate that is not suspended, revoked, or expired may be renewed upon the request of the registered solicitor and the submission of a new completed application and payment of the fee, unless any of the conditions for the denial, suspension or revocation of a certificate are present as set forth in Section 75-15 or a disqualifying status is present.

75-12 Form of certificate and identification badge.

A. Certificate Form. Should the licensing officer determine that the applicant is entitled to a certificate, the licensing officer shall issue a certificate to the applicant. The certificate shall list the name of the registered solicitor and the responsible person or entity, if any, and the date on which the certificate expires. The certificate shall be dated and signed by the license officer. The certificate shall be carried by the registered solicitor at all times while soliciting in the Village.

B. Identification Badge. With both the temporary and annual certificates, the Village shall issue each registered solicitor an identification badge that shall be worn prominently on his or her person while soliciting in the village. The identification badge shall bear the name of the village and shall contain:

1. The name of the registered solicitor;
2. Address and phone number of the registered solicitor, or the name, address, and phone number of the responsible person or entity is provided;
3. A recent photograph of the registered solicitor; and
4. The date on which the certificate expires.

75-13 Maintenance of registry.

The licensing officer shall maintain and make available for public inspection a copy or record of every completed application received and the certificate or written denial issued by the Village. The applicant's BCI background check shall remain a confidential, protected, private record not available for public inspection. The licensing officer may furnish to the head of the Village's law enforcement agency a listing of all applicants, those denied, and those issued a certificate.

75-14 Nontransferability of certificates.

Certificates shall be issued only in the name of the applicant and shall list the responsible party or entity, if any. The certificate shall be nontransferable. A registered solicitor desiring to facilitate or attempt to facilitate home solicitation sales with different: (A) goods or services; or (B) responsible person or entity, from those designated in the originally submitted completed application, shall submit a written change request to the licensing officer. A new certificate based on the amended information shall issue for the balance of time remaining on the solicitor's previous certificate before the amendment was filed. Before the new certificate is given to the registered solicitor, the registered solicitor shall obtain a revised identification badge from the village, after payment of the fee for the identification badge.

75-15 Denial, suspension, or revocation of a certificate of registration.

A. Denial. Upon review, the licensing officer shall refuse to issue a certificate to an applicant for any of the following reasons:

1. Denial of Temporary Certificate.
 - a. The application form is not complete;
 - b. The applicant fails to:
 - i. Establish proof of identity,
 - ii. Provide a BCI, or
 - iii. Pay the fees;

c. The completed application or BCI indicates that the applicant has a disqualifying status; or

d. The applicant has previously been denied a certificate by the Village, or has had a certificate revoked for grounds that still constitute a disqualifying status under this chapter.

2. Denial of Annual Certificate.

a. The information submitted by the applicant at the time of the granting of the temporary certificate is found to be incomplete or incorrect;

b. Since the submission of the completed application, the applicant is subject to a previously undisclosed or unknown disqualifying status;

c. Failure to complete payment of the fees;

d. Since the submission of the application, the Village has received a substantiated report regarding the past or present conduct of the applicant;

e. Since the submission of the application, the Village or other governmental entity has either criminally convicted or obtained a civil injunction against the applicant for violating this chapter or similar federal, state, or municipal laws in a manner rising to the level of a disqualifying status; or

f. Since the submission of the application, a final civil judgment has been entered against the applicant indicating that:

a. The applicant had either engaged in fraud, or intentional misrepresentation; or

b. That a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. Section 523(a)(2), (a)(4), (a)(6), or (a)(19).

3. Denial of Annual Certificate Renewal.

a. The information submitted by the applicant when seeking renewal of a certificate is found to be incomplete or incorrect;

b. Since the submission of the renewal application, the applicant is subject to a previously undisclosed or unknown disqualifying status;

c. Failure to complete payment of the fees;

d. Since the submission of the application or granting of a certificate, the village has received a substantiated report regarding the past or present conduct of the solicitor;

e. The Village or other governmental entity has either criminally convicted or obtained a civil injunction against the applicant for violating this chapter or similar federal, state, or municipal laws in a manner rising to the level of a disqualifying status; or

f. Since the submission of the application, a final civil judgment has been entered against the applicant indicating that:

- i. The applicant had either engaged in fraud, or intentional misrepresentation, or
- ii. That a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. Section 523(a)(2), (a)(4), (a)(6) or (a)(19).

B. Suspension or Revocation. The Village shall either suspend or revoke a certificate when any of the reasons warranting the denial of a certificate occurs and/or for any violation of this Chapter.

C. Notice of Denial or Suspension. Upon determination of the licensing officer to deny an applicant's completed application or to suspend a registered solicitor's certificate, the Village shall cause written notice to be sent to the applicant or registered solicitor by the method indicated in the completed application. The notice shall specify the grounds for the denial or suspension, the documentation or information the Village relied on to make the decision, the availability of the documentation for review by applicant upon three business day's notice to the Village, and the date upon which the denial or suspension of the certificate shall take effect. It shall further state that the applicant or registered solicitor shall have ten business days from the receipt of the notice of denial or suspension to appeal the same. The denial or suspension of the certificate shall be effective no sooner than three calendar days from the date the notice is sent, unless that suspension is because of exigent circumstances outlined in Section 75-4(HH)(3)(d), in which case, the suspension is effective immediately. The denial or suspension shall remain effective unless and until the order is rescinded, overturned on appeal, or determined by a court to be contrary to equity or law. Failure to appeal the suspension of a certificate automatically results in its revocation.

75-16 Appeals.

An applicant or registered solicitor whose certificate has been denied or suspended shall have the right to appeal to the Village Board of Trustees or its designee. Any appeal must be submitted by either the applicant, the responsible person or entity, or legal counsel for either who: (A) documents the relationship with the applicant or responsible person or entity; or (B) is licensed or authorized by the state of New York to do so, and makes the assertion of an agency relationship. The following procedures and requirements shall apply:

A. Any appeal must be submitted in writing to the Village Clerk with a copy to the license officer within ten business days of the decision from which the appeal is taken. Such appeal shall describe in detail the nature of the appeal, the action complained of and the grounds for appeal.

B. Upon request of the applicant or registered solicitor, within one business day, the Village will make available any information upon which it relied in making the determination to either deny or suspend the certificate.

C. The appeals officer shall review, de novo, all written information submitted by the applicant or registered solicitor to the licensing officer, any additional information relied upon by the licensing officer as the basis for denial, suspension or revocation, and any additional information supplied by the Village, applicant or registered

solicitor. Any additional information submitted by any party to the appeal to the appeals officer shall be simultaneously submitted to the opposing party. If desired, any party shall have three business days to submit rebuttal documentation to the appeals officer regarding the additional information submitted by the opposing party.

D. The appeals officer will render a decision no later than fifteen calendar days from the date the appeal was taken, unless an extension of time is agreed upon by the parties. In the event that any party to the appeal submits rebuttal information as allowed in subsection (C) of this section, the fifteen calendar days shall be extended to include the additional three days for rebuttal.

1. The denial or suspension of the certificate shall be reversed by the appeals officer if upon review of the written appeal and information submitted, the appeals officer finds that the licensing officer made a material mistake of law or fact in denying or suspending the applicant or registered solicitor's certificate.

2. If the written appeal and information submitted indicates that the licensing officer properly denied or suspended the certificate of the applicant or registered solicitor, the denial or suspension of the certificate shall be affirmed and constitute a determination that the suspended certificate is revoked.

3. The decision of the appeals officer shall be delivered to the applicant or registered solicitor by the means designated in the completed application, or as otherwise agreed upon when the appeal was filed.

E. After the ruling of the appeals officer, the applicant or solicitor is deemed to have exhausted all administrative remedies with the village.

F. Nothing herein shall impede or interfere with the applicant's, solicitor's, or Village's right to seek relief in a court of competent jurisdiction.

75-17 Deceptive soliciting practices prohibited.

A. No solicitor shall intentionally make any materially false, fraudulent, or otherwise misleading statement in the course of soliciting.

B. A solicitor shall immediately disclose to the consumer during face-to-face solicitation (1) the name of the solicitor; (2) the name and address of the entity with whom the solicitor is associated; and (3) the purpose of the solicitor's contact with the person and/or competent individual. This requirement may be satisfied through the use of the badge and an informational flyer.

C. No solicitor shall use a fictitious name, an alias, or any name other than his or her true and correct name.

D. No solicitor shall represent directly or by implication that the granting of a certificate of registration implies any endorsement by the village of the solicitor's goods or services or of the individual solicitor.

75-18 “No Solicitation” notice.

- A. Any occupant of a residence may give notice of a desire to refuse solicitors by displaying a “No Solicitation” sign which shall be posted on or near the property line adjacent to the sidewalk or other entrance area leading upon or to the residence.
- B. The display of such sign or placard shall be deemed to constitute notice to any solicitor that the inhabitant of the residence does not desire to receive and/or does not invite solicitors.
- C. It shall be the responsibility of the solicitor to check each residence for the presence of any such notice before entering the property of such residence.
- D. The provisions of this section shall apply also to solicitors who are exempt from registration pursuant to the provisions of this chapter.
- E. In addition and/or alternatively, any person who owns, rents, and/or otherwise occupies a residence and/or business in the Village who does not wish to have anyone enter upon and/or call upon the residence or business to solicit may inform the Village Clerk's Office of the same in writing and the Village Clerk's Office shall maintain and make available for public inspection a list of the addresses of those persons that do not want anyone to enter upon and/or call upon their residence and/or place of business. A list of addresses of those persons not wanting solicitors to enter upon and/or call upon their residence and/or place of business shall be given to each person who files an application for a solicitation license in the Village.

75-19 Duties of solicitors.

- A. Every person soliciting or advocating shall check each residence for any “No Soliciting” sign or placard or any other notice or sign notifying a solicitor not to solicit on the premises, such as, but not limited to, “No Solicitation” signs. If such sign or placard is posted such solicitor shall desist from any efforts to solicit at the residence or dwelling and shall immediately depart from such property. Possession of a certificate of registration does not in any way relieve any solicitor of this duty.
- B. It is a violation of this Chapter for any person soliciting or advocating to knock on the door, ring the doorbell, or in any other manner attempt to attract the attention of an occupant of a residence that bears a “No Solicitation” sign or similar sign or placard for the purpose of engaging in or attempting to engage in advocating, a home solicitation sale, door-to-door soliciting, or soliciting.
- C. It is a violation of this Chapter for any solicitor through ruse, deception, or fraudulent concealment of a purpose to solicit to take action calculated to secure an audience with an occupant at a residence.
- D. Any solicitor who is at any time asked by an occupant of a residence or dwelling to leave shall immediately and peacefully depart.
- E. The solicitor shall not intentionally or recklessly make any physical contact with or touch another person without the person's consent;
- F. The solicitor shall not follow a person into a residence without their explicit consent;

G. The solicitor shall not continue repeated soliciting after a person and/or competent individual has communicated clearly and unequivocally their lack of interest in the subject, goods or services of the solicitor;

H. The solicitor shall not use obscene language or gestures.

75-20 Time of day restrictions.

It shall be unlawful for any person, whether licensed or not, to solicit at a residence before nine a.m. or after six p.m., unless the solicitor has express prior written permission from the resident to do so.

75-21 Buyer's right to cancel.

In any home solicitation sale, unless the buyer requests the solicitor in writing to provide goods or services without delay, the seller or solicitor shall present to the buyer and obtain buyer's signature to a written statement which informs the buyer of the right to cancel within the tenth business day after signing an agreement to purchase. Such notice of "Buyer's right to cancel" shall be in the form required by the Village.

75-22 Penalties.

Any person who violates any term or provision of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one thousand dollars and/or a jail sentence of not to exceed six months.

75-23 Enforcement.

- A. The Police Department of the Town of Blooming Grove and/or the enforcement official as may be designated, is charged with enforcing the provisions of this Chapter and shall have the power, right and authority to issue an appearance ticket, as the same is defined in Article 150 of the Criminal Procedure Law of the State of New York, for the violation of any section of this chapter.
- B. Any persons claiming to be aggrieved by an alleged unlawful practice forbidden by this article may, by himself or by his attorney at law, make, sign and file a complaint directly with the Police Department, or with the Village Clerk, who shall forward the complaint to the Police Department for investigation.

75-24 Effect of invalid provision.

Nothing in this Chapter shall be construed to preempt any provision of State or Federal Law.

Should any Courts of this State declare any provision of this Chapter unconstitutional, or unauthorized, or in conflict with any other section or provision of this Chapter, then such determination shall affect only that specific section or provision so declared to be unconstitutional or unauthorized and shall not affect any other section or part of this Chapter.

75-25 Effective date.

This local law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.