

Registration of Document Destruction Contractors

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Registration of Document Destruction Contractors

Article 39-G, General Business Law

Section

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Title 19 NYCRR, Part 198

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Registration of Document Destruction Contractors

§ 899-AAA. Definitions.

As used in this article, the following terms shall have the following meanings:

1. "Certificate" means a certificate of registration issued under this article.

2. "Department" means the New York State Department of State.

3. "Document" means any record kept, held, filed, produced or reproduced by, with or for a person or business entity, in any physical form whatsoever including but not limited to reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, or computer tapes or discs.

4. "Document Destruction" means the burning, pulverizing, or shredding of a record, or any action taken to render the personal identifying information contained on a record unreadable and incapable of reconstruction.

5. "Document Destruction Contractor" means a person, firm or corporation that owns or operates a business, the principal purpose of which is to destroy records containing personal identifying information for a fee, and for whom the total cash price of all of his, her or it's document destruction contracts exceeds five hundred dollars during any period of twelve consecutive months.

6. "Personal Information" means any information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person.

7. "Personal Identifying Information" means personal information consisting of any information in combination with any one or more of the following data elements, when either the personal information or the data element is not encrypted, or encrypted with an encryption key that is included in the same record as the encrypted personal information or data element:

- (a) social security number;
- (b) driver's registration number or non-driver identification card number; or
- (c) mother's maiden name, financial services account number or code, savings account number or code, checking account number or code, debit card number or code, automated teller machine number or code, electronic serial number or personal identification number.

8. "Personal Identification Number" means any number or code which may be used alone or in conjunction with any other information to assume the identity of another person or access financial resources or credit of another person.

9. "Record" means any information kept, held, filed, produced or reproduced by, with or for a person or business entity, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, or computer tapes or discs.

§ 899-BBB. Document Destruction Contractors.

1. On or after October first, two thousand eight, no person, firm or corporation shall hold himself, herself or itself out to be a document de-

struction contractor in New York State without first registering with the department as provided in this section.

2. Any person, firm or corporation seeking a certificate of registration as a document destruction contractor shall file with the department an application for registration in such form and detail as the department shall prescribe, including the following:

- (a) the name and residence address of the applicant;
- (b) the business name, if other than applicant;
- (c) the place, including the city, town or village, with the street and number, where the business is to be located;
- (d) the business telephone of the applicant;
- (e) the length of time that the applicant has been a document destruction contractor;
- (f) a statement indicating whether the applicant has:
 - (i) been convicted of any crime or is a debtor on any unpaid civil judgment relating to work as a document destruction contractor; and
 - (ii) at any time in the past been issued a registration pursuant to this section, and if so, whether such registration was ever revoked or suspended;
- (g) satisfactory evidence of good moral character;
- (h) a statement indicating the methods of document destruction utilized by the applicant;
- (i) a sworn statement by the applicant that the information set forth in the application is current and accurate; and
- (j) a complete set of two fingerprint cards for each principal and officer of the applicant on a standard fingerprint card approved by the division of criminal justice services. Such cards shall be retained by the department and used solely for the purpose of conducting an investigation pursuant to subdivision twelve of this section. If additional copies of fingerprints are required the applicant shall furnish them upon request.

3. In determining whether to issue or renew a registration, the secretary of state may consider the character, competency and integrity of the applicant.

4. The secretary of state may refuse to issue a registration to any person, firm or corporation whom he or she finds has been convicted of any crime, or failed to pay any final civil judgment, relating to work as a document destruction contractor, if such refusal will, in the judgment of the secretary of state, best promote the interests of the people of this state.

- 5. (a) A registration issued or renewed under the provisions of this section shall entitle a person to act as a registered document destruction contractor in the State of New York for a period of two years from the effective date of the registration. Any registration granted under this section may be renewed by the department upon application and payment of the fee for such renewal by the holder thereof, in such form as the department may prescribe;
- (b) the secretary of state shall have the authority to assign staggered expiration dates for registrations at the time of renewal. If the assigned date results in a term that exceeds twenty-four months, the applicant shall pay an additional pro-rated adjustment together with the regular renewal fee; and
- (c) the secretary of state shall issue each document destruction contractor a unique registration number.
- 6. (a) Each original application or application for renewal for registration as a document destruction contractor shall be accompanied by a fee or fifty dollars for each biennial registration period;

- (b) notice in writing in the manner and form prescribed by the department shall be given to the department at its offices in Albany within ten days of change of name or address by registered document destruction contractors. The fee for filing each change of name or address notice shall be ten dollars; and
- (c) in the case of loss, destruction or damage, the department may, upon submission of a request in such form and manner as the department may prescribe, issue a duplicate registration upon payment of a fee of ten dollars.

7. The fees established by this section shall not be refundable.

8. Each document destruction contractor engaged in making document destruction contracts shall exhibit his or her certificate upon the request of any interested party.

9. Every document destruction contract subject to the provisions of this article, and all amendments thereto, shall be evidenced by a writing and shall be signed by all the parties to the contract. The writing shall contain the contractor's registration number issued by the secretary of state pursuant to this article.

10. No person, firm or corporation shall:

- (a) present, or attempt to present, as his, her or its own, the registration of another;
- (b) knowingly give false evidence of a material nature to the department for the purpose of procuring a registration;
- (c) falsely represent themselves to be a registered document destruction contractor;
- (d) use or attempt to use a registration which has expired;
- (e) offer to perform or perform any document destruction without having a current registration as is required under this section; or
- (f) represent in any manner that his, her or its registration constitutes an endorsement of the quality of workmanship or competence of the contractor.

11. Registrations issued to document destruction contractors shall not be transferable or assignable.

12. (a) The secretary of state shall promulgate such rules and regulations as are deemed necessary to effectuate the purposes of this article, and shall provide written notification of the provisions of this article to all document destruction contractors registered pursuant to this article;

(b) the secretary of state shall have the power to enforce the provisions of this article and upon complaint of any person, or upon the secretary's initiative, to investigate any violations thereof or to investigate the business, business practices and business methods of any person, firm, limited liability company, partnership or corporation applying for or holding a registration as a document destruction contractor, if in the opinion of the secretary of state such investigation is warranted. Each such applicant or registrant shall be obliged, on request of the secretary of state, to supply such information, books, papers or records as may be required concerning his, her or its business, business practices or business methods, or proposed business practices or methods. Failure to comply with a lawful request of the secretary shall be a ground for denying an application for a registration, or for revoking, suspending, or failing to renew a registration issued under this article; and

(c) the department shall have the power to revoke or suspend any registration, or in lieu thereof to impose a fine not exceeding one thousand dollars payable to the department, or reprimand any registrant or deny an application for a registration or renewal thereof upon proof:

(i) that the applicant or registrant has violated any of the provisions of this article or the rules and regulations promulgated pursuant to this article;

(ii) that the applicant or registrant has practiced fraud, deceit or misrepresentation;

(iii) that the applicant or registrant has made a material misstatement in the application for or renewal of his or her registration; and

(iv) that the applicant or registrant has demonstrated incompetence or untrustworthiness in his or her actions.

13. The department shall, before denying an application for a registration or before revoking or suspending any registration, or imposing any fine or reprimand, and at least fifteen days prior to the date set for the hearing, and upon due notice to the complainant or objector, notify in writing the applicant for, or the holder of such registration of any charge made and shall afford such applicant or registrant an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the applicant or registrant, or by mailing same by registered mail to the last known business address of such applicant or registrant.

14. The hearing on such charges shall be at such time and place as the department shall prescribe and shall be conducted by such officer or person in the department as the secretary of state may designate, who shall have the power to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his or her deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules. Such officer or person in the department designated to take such testimony shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure.

15. In the event that the department shall deny the application for, or revoke or suspend any such registration, or impose any fine or reprimand, its determination shall be in writing and officially signed. The original of such determinations, when so signed, shall be filed in the office of the department and copies thereof shall be mailed to the applicant or registrant and to the complainant within two days after such filing.

16. The department, acting by the office or person designated to conduct the hearing pursuant to subdivision fourteen of this section or by such other officer or person in the department as the secretary of state may designate, shall have the power to suspend the registration of any registrant who has been convicted in this state or any other state or territory of a felony or of any misdemeanor for a period not exceeding thirty days pending a hearing and a determination of charges made against him or her. If such hearing is adjourned at the request of the registrant, or by reason of any act or omission by him or her or on his or her behalf, such suspension may be continued for the additional period of such adjournment.

17. The action of the department in granting or refusing to grant or to renew a registration under this article or in revoking or suspending or refusing to revoke or suspend such a registration or imposing any fine or reprimand shall be subject to review by a proceeding instituted under article seventy-eight of the civil practice law and rules at the instance of the applicant for such registration, the holder of a registration so revoked, suspended, fined or reprimanded or the person aggrieved.

18. The department shall maintain and publish a registry of all registered document destruction contractors, which shall list and identify on a county by county basis, all registered document destruction contractors doing business in this state. The department shall make the registry available on its website. Copies of the roster shall be made available upon request and payment of a fee to be determined by the secretary of state and approved by the director of the division of the budget.

19. (a) Any person, firm or corporation that operates as a document destruction contractor without being registered shall be required to pay a civil penalty in the sum of one thousand dollars per document destruction contract entered into in violation of this section. However, any such person, firm or corporation against whom such penalty has been assessed may avoid all but five hundred dollars of such penalty by obtaining a registration as required by this section, provided that application for such registration is made not more than ten days after the imposition of such penalty and the document destruction contractor has never received a prior fine for failure to register in New York or in any other state that requires registration; and

(b) a document destruction contractor may not maintain a civil action to recover payment for work under a document destruction contract performed if such contractor is not registered as required under this section.

20. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the State of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin or restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

and investigation requirements which meet or exceed the requirements of this section.

§ 198.3 Supervisory responsibility

Each registered document destruction contractor shall supervise its employees and their business activities. Such supervision shall include but not be limited to regular, frequent and consistent personal guidance, instruction, oversight and superintendence by such contractor with respect to its general business and all matters relating thereto.

§ 198.4 Business and employee records

(a) Each registered document destruction contractor shall keep and maintain for a period of at least three years all records of each transaction it performs; provided, however, that with respect to any transaction which is the subject of litigation, upon the expiration of such three-year period, such records shall be continue to be retained for the duration of the litigation and any pending appeal. Litigation shall include investigation or administrative action by the Department of State, initiated by complaint from the general public or by the department.

(b) Each registered document destruction contractor shall maintain employee and business records at a central location within New York State. For purposes of this Part, business records shall include all company and personnel records pertaining exclusively to the conduct of business in New York State.

(c) Each registered document destruction contractor shall prepare and retain as a business record a statement of services and charges which have been agreed upon between such contractor and its customer, a copy of which shall be provided to such customer after it has been signed by both parties. The statement of services and charges shall also identify and name any employee who will be providing the consumer with document destruction services.

§ 198.5 Employee responsibility

Any person who is or has been an employee of a registered document destruction contractor shall not divulge to anyone other than his or her employer, except as may be required by law, any information acquired by him or her during such employment in respect to any of the work to which he or she shall have been assigned by such employer.

§ 198.6 Registration revocation and suspension

A document destruction contractor, or the principal of any document destruction firm, company, partnership, corporation or organization registered under Article 39-G of the General Business Law which has its registration revoked or suspended by the Department of State shall be ineligible to re-register as a document destruction contractor for the period of such revocation or suspension. A document destruction contractor whose license has been revoked or suspended shall be prohibited from acting as a principal of any document destruction contractor firm, company, partnership, corporation or organization or from employing other persons to conduct document destruction services for the period of the revocation or suspension.

§ 198.7 Notice of criminal conviction

A registered document destruction contractor who is convicted of a crime as defined in the Penal Law in this State or an offense which would constitute a crime if committed in New York in any other state or Federal or foreign jurisdiction, shall give notice of such conviction to the Department of State, Division of Licensing Services, at its Albany Office, by certified mail, return receipt requested, within 10 days from date of conviction.

RULES AND REGULATIONS

19 NYCRR PART 198

Document Destruction Contractors

§ 198.1 Fingerprinting: principals and officers

Fingerprints taken pursuant to General Business Law section 899-bbb shall be taken by a method prescribed by the Division of Criminal Justice Services.

§ 198.2 Investigation

Within five business days after receipt of an application for registration as a document destruction contractor, the Department of State shall transmit to the Division of Criminal Justice Services two sets of fingerprints and the fees required pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law for the cost of the Division's full search and retain procedures. The required fees shall be paid by the applicant upon submitting the completed application to the Department of State. The Division of Criminal Justice Services shall ascertain whether or not the applicant has been charged with or convicted of a crime and shall provide a criminal history report to the Department of State. The Department of State may cause to be conducted an investigation to verify the information contained in the criminal history report and the application for a document destruction contractor license. The Department, in consultation with the Division, may waive such background checks, investigations and fees if in its opinion, the applicant has been subject to previous background checks

§ 198.8 Statement of licensure

All documents or receipts issued by a registered document destruction contractor shall contain the unique identification number issued to such individual or business and the phrase “registered with the N.Y.S. Department of State.”

§ 198.9 Enforcement

All principals and employees of registered document destruction contractors shall be subject to the enforcement provisions contained in Article 39-G of the General Business Law.