

HIGHLIGHTS OF CALIFORNIA'S NEW HOME IMPROVEMENT CONTRACT

Introduction

As all of you should know, California now has a brand new Home Improvement Contract. The Contractors Board thought that the new contracts would be quicker and easier. However, it is not quicker nor is it easier. It still contains too many pages.

In addition to the Home Improvement Contract, there is a new Service & Repair Contract, but that has severe limitations.

There are also new requirements for New Residential Contracts, Residential (Home Improvement) Contracts under \$500.00, and Swimming Pool Contracts. Swimming Pool Contracts have some additional information that differs from the Home Improvement Contract.

Enclosed are some of the **Highlights of the new Home Improvement and Service & Repair Contracts**. We urge you to seek the aid and advice of a competent construction attorney if you want such a contract drafted. If you do not, we urge you to call a bookstore that we know has such form contracts. Their name is Builders Book, Inc., in Canoga Park, and their phone number is (818) 887-7828.

The following is just a brief summary of the requirements of the new Home Improvement Contract and Service & Repair Contract. This is a shorthand explanation and should be looked at by your attorney. It is not all-inclusive. This is not an exact statement of the law, but shorthand notes for you to review and to help you understand the new requirements.

Home Improvement Requirements for Contracts:

Heading "**Home Improvement**" in 10-point boldface type.

Any printed form shall be readable. Unless a larger typeface is specified in this article, text in any printed form shall be in at least 10-point typeface and the headings shall be in at least 10-point boldface type.

The writing shall be legible.

The name and business address of the owner and the owner's residence address.

The name and address of the construction lender.

The name, business address, and license number of the contractor.

The contract shall contain on the first page, in a typeface no smaller than that generally used in the body of the document, both of the following:

- (i) The date the buyer signed the contract.
- (ii) The name and address of the contractor to which the applicable "Notice of Cancellation" is to be mailed, immediately preceded by a statement advising the buyer that the "Notice of Cancellation" may be sent to the contractor at the address noted on the contract.

A statement that, upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the person contracting for the home improvement or swimming pool work a full and unconditional release from any claim or mechanic's lien.

In close proximity to the signatures of the owner and contractor, a statement that you the owner or tenant has the right to require the contractor to have a performance and payment bond.

The name and registration number of the home improvement salesperson that solicited or negotiated the contract.

"You are entitled to a completely filled in copy of this agreement, signed by both you and the contractor, before any work may be started." in 12-point boldface type.

The heading: "**Contract Price**," in bold face type followed by the contract price in dollars and cents.

Most contractors do not utilize a Finance Charge, however, if you ever do decide to use a Finance Charge, you need to use a different contract that includes the heading "**Finance Charge**", a space for the amount of the Finance Charge in dollars and cents, as well as other matters.

"Description of the Project and Description of the Significant Materials to be Used and Equipment to be Installed," followed by a description of the project and a description of the significant materials to be used and equipment to be installed. For swimming pools, the project description required under this paragraph also shall include a plan and scale drawing showing the shape, size, dimensions, and the construction and equipment specifications.

(A) The heading: "**Down Payment**."

(B) A space where the actual down payment appears.

(C) The following statement in at least 12-point boldface type:

"THE DOWN PAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS."

The heading: "**Schedule of Progress Payments**" if progress payments are to be made.

Each progress payment shall be stated in dollars and cents and specifically reference the amount of work or services to be performed and any materials and equipment to be supplied.

The section of the contract reserved for the progress payments shall include the following statement in at least 12-point boldface type:

"The schedule of progress payments must specifically describe each phase of work, including the type and amount of work or services scheduled to be supplied in each phase, along with the amount of each proposed progress payment. IT IS AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A DOWNPAYMENT."

A statement that describes what constitutes substantial commencement of work under the contract.

The heading: "**Approximate Start Date**," followed by the approximate start date.

The heading: "**Approximate Completion Date**," followed by the approximate completion date.

"List of Documents to be Incorporated into the Contract," then list the documents that are attached to your contract.

A notice concerning commercial general liability insurance. This notice may be provided as an attachment to the contract if the contract includes the following statement:

"A notice concerning commercial general liability insurance is attached to this contract."

The notice shall include the heading "**Commercial General Liability Insurance (CGL)**," followed by whichever of the following statements is both relevant and correct:

(A) "(The name on the license or 'This contractor') does not carry commercial general liability insurance."

(B) "(The name on the license or 'This contractor') carries commercial general liability insurance written by (the insurance company). You may call the (insurance company) at _____ to check the contractor's insurance coverage."

(C) "(The name on the license or 'This contractor') is self-insured."

A notice concerning workers' compensation insurance. This notice may be provided as an attachment to the contract if the contract includes the statement:

"A notice concerning workers' compensation insurance is attached to this contract."

The notice shall include the heading "**Workers' Compensation Insurance**" followed by whichever of the following statements is correct:

(A) "(The name on the license or 'This contractor') has no employees and is exempt from workers' compensation requirements."

(B) "(The name on the license or 'This contractor') carries workers' compensation insurance for all employees."

The heading "**Note about Extra Work and Change Orders,**" can be attached to the contract followed by the following statement:

"Extra Work and Change Orders become part of the contract once the order is prepared in writing and signed by the parties prior to the commencement of any work covered by the new change order. The order must describe the scope of the extra work or change, the cost to be added or subtracted from the contract, and the effect the order will have on the schedule of progress payments." *Business and Professions Code* section 7159(d)(13).

AND

A notice that provides the buyer with the following information about the performance of extra or change-order work:

(A) A statement that the buyer may not require a contractor to perform extra or change-order work without providing written authorization prior to the commencement of any work covered by the new change order.

(B) A statement informing the buyer that extra work or a change order is not enforceable against a buyer unless the change order also identifies all of the following in writing prior to the commencement of any work covered by the new change order:

- (i) The scope of work encompassed by the order.
- (ii) The amount to be added or subtracted from the contract.
- (iii) The effect the order will make in the progress payments or the completion date.

(C) A statement informing the buyer that the contractor's failure to comply with the requirements of this paragraph does not preclude the recovery of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment.

A notice with the heading "Mechanics' Lien Warning" can be attached to the contract written as follows:

MECHANICS LIEN WARNING:

Anyone who helps improve your property, but who is not paid, may record what is called a mechanics' lien on your property. A mechanics' lien is a claim, like a mortgage or home equity loan, made against your property and recorded with the county recorder.

Even if you pay your contractor in full, unpaid subcontractors, suppliers, and laborers who helped to improve your property may record mechanics' liens and sue you in court to foreclose the lien. If a court finds the lien is valid, you could be forced to pay twice or have a court officer sell your home to pay the lien. Liens can also affect your credit.

To preserve their right to record a lien, each subcontractor and material supplier must provide you with a document called a '20-day Preliminary Notice.' This notice is not a lien. The purpose of the notice is to let you know that the person who sends you the notice has the right to record a lien on your property if he or she is not paid.

BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the subcontractor starts work or the supplier provides material. This can be a big problem if you pay your contractor before you have received the Preliminary Notices.

You will not get Preliminary Notices from your prime contractor or from laborers who work on your project. The law assumes that you already know they are improving your property.

PROTECT YOURSELF FROM LIENS. You can protect yourself from liens by getting a list from your contractor of all the subcontractors and material suppliers that work on your project. Find out from your contractor when these subcontractors started work and when these suppliers delivered goods or materials. Then wait 20 days, paying attention to the Preliminary Notices you receive.

PAY WITH JOINT CHECKS. One way to protect yourself is to pay with a joint check. When your contractor tells you it is time to pay for the work of a subcontractor or supplier who

has provided you with a Preliminary Notice, write a joint check payable to both the contractor and the subcontractor or material supplier.

For other ways to prevent liens, visit CSLB's Web site at www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN PLACED ON YOUR HOME. This can mean that you may have to pay twice, or face the forced sale of your home to pay what you owe."

The heading "**Information about the Contractors' State License Board**" has to be on the contract in 12 point type as follows:

Information about the Contractors' State License Board (CSLB): CSLB is the state consumer protection agency that licenses and regulates construction contractors.

Contact CSLB for information about the licensed contractor you are considering, including information about disclosable complaints, disciplinary actions and civil judgments that are reported to CSLB.

Use only licensed contractors. If you file a complaint against a licensed contractor within the legal deadline (usually four years), CSLB has authority to investigate the complaint. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be in civil court, and you may be liable for damages arising out of any injuries to the unlicensed contractor or the unlicensed contractor's employees.

For more information:

Visit CSLB's Web site at www.cslb.ca.gov

Call CSLB at 800-321-CSLB (2752)

Write CSLB at P.O. Box 26000, Sacramento, CA 95826.

IF YOU ARE GOING TO HAVE AN ARBITRATION PROVISION IN HOME IMPROVEMENT CONTRACTS (or attached):

While you can change the "Arbitration of Disputes" portion of the clause, all language after the word "NOTICE" must be word-for-word as written below:

ARBITRATION OF DISPUTES

ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATED TO THIS CONTRACT, OR THE BREACH THEREOF, SHALL BE SETTLED BY BINDING ARBITRATION IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AND JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. CLAIMS WITHIN THE MONETARY LIMIT OF THE SMALL CLAIMS COURT SHALL BE LITIGATED IN SUCH COURT AT THE REQUEST OF EITHER PARTY, SO LONG AS BOTH PARTIES LIMIT THEIR RIGHT TO RECOVERY TO THE JURISDICTION OF THE SMALL CLAIMS COURT.

ANY CLAIM FILED IN SMALL CLAIMS COURT SHALL NOT BE DEEMED TO BE A WAIVER OF THE RIGHT TO ARBITRATE, AND IF A COUNTER CLAIM IN EXCESS OF THE JURISDICTION OF THE SMALL CLAIMS COURT IS FILED IN THE MUNICIPAL OR SUPERIOR COURT, THEN THE PARTY FILING IN SMALL CLAIMS COURT MAY DEMAND ARBITRATION PURSUANT TO THIS PARAGRAPH.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE BUSINESS AND PROFESSIONS CODE OR OTHER APPLICABLE LAWS. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION.

I (WE) AGREE TO ARBITRATION

_____ initial

_____ initial

The notice entitled "Three-Day Right to Cancel," shall be provided to the buyer (it can be attached to the contract) (unless the following exceptions apply—(1) negotiated at contractor's place of business or (2) subject to "Seven-Day Right to Cancel"):

Three-Day Right to Cancel

You, the buyer, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor's instructions on how to return the goods at the contractor's expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract."

I, _____ (Buyer) hereby acknowledge that on _____ (Date) I was provided this document entitled "Three-Day Right to Cancel."

(Buyer's Signature)

This Notice must comply with the following:

- (i) The text of the notice is at least 12-point boldface type.
- (ii) The notice is in immediate proximity to a space reserved for the owner's signature.
- (iii) The owner acknowledges receipt of the notice by signing and dating the notice form in the signature space.
- (iv) The notice is written in the same language, e.g., Spanish, as that principally used in any oral sales presentation.
- (v) The notice may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: "The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a 'Notice of the Three-Day Right to Cancel.'"

The agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract (it can be attached to the contract):

"Notice of Cancellation"

/enter date of transaction/

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____,
/name of seller/

at _____
/address of seller's place of business/

not later than midnight of _____.
(Date)

I hereby cancel this transaction. _____
(Date)

(Buyer's signature)

If damaged by a Disaster substitute the following: (same requirements as 3-Day listed above) (it can be attached to the contract)

"Seven-Day Right to Cancel

You, the buyer, have the right to cancel this contract within seven business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business by midnight of the seventh business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor's instructions on how to return the goods at the contractor's expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract."

I, _____(Buyer) hereby acknowledge that on _____(Date) I was provided this document entitled "Seven-Day Right to Cancel."

Buyer's Signature

(The Notice of Cancellation can be attached to the contract)

"Notice of Cancellation"

/enter date of transaction/

(Date)

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____,
/name of seller/

at _____
/address of seller's place of business/

not later than midnight of _____.
(Date)

I hereby cancel this transaction. _____
(Date)

(Buyer's signature)

Service and Repair Contracts

These are special contracts limited to the following:

- The contract amount is seven hundred fifty dollars (\$750) or less;
- The buyer must have initiated contact with the contractor to request the work;
- The contractor does not sell the buyer goods or services beyond those reasonably necessary to take care of the particular problem that caused the buyer to contact the contractor; and
- No payment is due until the work is completed

The most important part of this type of contract is that if the four bullet points above are satisfied and the owner has given a fully signed contract there is no Three Day Right to Rescind.

DIFFERENCES:

Service and Repair Contracts have many of the same elements as the standard Home Improvement Contracts. Some of the differences are listed below.

Replacement Parts - The heading: "The law requires that the contractor offer the consumer any parts that were replaced during the service call. If they do not want the parts, they initial the checkbox labeled "OK for contractor to take replaced parts.' "

Service Charges - If a service charge is charged, the heading "Amount of Service Charge" followed by the service charge, and the statement "You may be charged only one service charge, including any trip charge or inspection fee".

Right to Cancel - The contractor lets the consumer know that the right to cancel, expires when the contract is signed and work starts. The contract, or an attachment to the contract must include, in immediate proximity to the space reserved for the buyer's signature, the following statement, in a size equal at least to **12-point boldface type**, which shall be dated and signed by the buyer:

YOUR RIGHTS TO CANCEL BEFORE WORK BEGINS

You, the buyer, have the right to cancel this contract until:

- 1. You receive a copy of this contract signed and dated by you and the contractor; and**
- 2. The contractor starts work.**

NOTE: There are numerous other documents required. However, we are not listing them because we do not know of anyone using this Contract since it is still lengthy and restricted.

REMEMBER THIS IS A COMPLICATED AREA OF LAW AND YOU SHOULD SEEK THE AID AND ADVICE OF COUNSEL BEFORE USING THESE FORMS.

