

THE BOOK ON THE

CALIFORNIA RIGHT TO CANCEL



*A Restoration Contractor's Guide
with Forms & Instructions*

ED CROSS

THE RESTORATION LAWYER

The Book on the California Right to Cancel

A Restoration Contractor's Guide with Forms & Instructions

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*For my sweetheart, Lisa,
Thank you for your patience while I work long hours.
I love you.*

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ABOUT THE AUTHOR



“The Restoration Lawyer” Ed Cross grew up in the Los Angeles suburbs, working in his father’s construction company for a decade, ultimately reaching the position of Operations Manager.

At age 12, Ed was loading trucks, sweeping floors, and hauling trash in his father’s warehouse. At age 14, his dad moved him into the office to sort brochures, stuff envelopes, and file accounting records. At age 15, his dad had him start making collection calls, which was an eye-opening experience. Little did Ed know that 18 years later, he would be making collection calls as the attorney for esteemed restoration contractors, large and small.

Since 1997, Ed and his team have recovered many tens of millions of dollars for cleaning and restoration companies across the country, defending them in court, drafting their contracts, and helping them develop practical risk management strategies. He has drafted many hundreds of customized contracts for insurance repairs, emergency mitigation, reconstruction, and contents restoration for many of the biggest names in the disaster recovery industry. Hundreds of companies sign many millions of dollars of contracts every week using his contracts, for everything from small carpet cleaning projects, to coronavirus disinfection, to major fire repairs. Restorers ultimately nicknamed him “The Restoration Lawyer.”

Ed has given hundreds of invited presentations to the cleaning and restoration industry across the country, and has authored many dozens of legal articles and treatises dealing with remediation and restoration, including *Litigation a la Mold*, a cover story of the Los Angeles Lawyer Magazine. He has been a columnist and feature writer for Restoration & Remediation Magazine, Cleaning & Restoration Magazine, CleanFax, Bio Recovery Today, and others.

In 2019, Ed was appointed to launch the Restoration Industry Association’s highly-publicized Advocacy & Government Affairs Committee (AGA), which seeks to level the playing field for restorers, particularly in property insurance claims settlements, among other things. He was Chairman of the Committee in its first year, and was then retained as the Association’s Restoration Advocate and launched a ground-breaking campaign for the positions taken by the Association. His efforts were the catalysts for many significant wins and breakthroughs for restorers with respect to standardized pricing, third party consultants, and third party administrators. His talk show, [Face The Advocate](#) debuted in 2020, to critical acclaim.

Before law school, “Eddie” Cross was the drummer for the million-selling hard rock group, *Autograph*. He played drums and sang on the band’s [Missing Pieces](#) album and its 1989 American tour, and he sang on Steve Plunkett’s solo album, [My Attitude](#). He performed publicly with many prominent rock musicians, including members of Poison, Quiet Riot, Ratt, and Cinderella.

In his leisure time, he enjoys cinematography, scuba diving, travelling Asia with his sweetheart Lisa, and playing with his granddaughter, Eastan.

Ed's Letter to the Reader

If there's one thing I've learned addressing legal issues confronting the U.S. restoration industry since 1997, it's that California regulates the restoration *way* more than any other state, perhaps by a factor as large as 10. California is widely criticized for being "anti-business," largely due to its strict consumer protection laws. In 2006, it outlawed time and materials pricing for all residential work, creating a predicament for emergency service contractors. Restorers have had no voice before the California legislature, and when laws are passed, it's as though the emergency service and insurance restoration industries don't even exist.

Most of California's contract requirements call for steps that represent good business practices that not only benefit the service provider, but the consumer, as well. It makes sense to have a meeting of the minds with customers about what will be done, when, where, and for how much money. This level of transparency is central to California's dreaded "Home Improvement Contract" law, which requires at *least* seven (7) pages of documents for any residential job over \$750. Unbeknownst to many, three (3) full pages must be dedicated to the right of rescission, also known as the "right to cancel." Unfortunately, the technical requirements are vast and complex, particularly in regard to the dizzying array of mandates set forth in [Business & Professions Code section 7159](#) and [7159.5](#). Click those links to see what I mean. If a contractor fails to provide proper notice of the right to cancel, the customer may retain the right to cancel the contract forever, which could create serious collection problems.

Notably, in 2021, the State added yet another layer of rules to the right to cancel, by requiring a *third* kind of notice of the right to cancel—this one for seniors. Once again, my phone rang off the hook with contractors trying to find ways to cope with the new requirements, and once again, we had to formulate a workable strategy that would allow for the smooth execution of contracts. I had been planning to start writing books for a long time, so this seemed like the best place to start. This is the first of many books I plan to write, in an effort to disseminate important legal and business information to the largest possible number of restorers, especially those who lack the resources to hire competent legal counsel.

Appendix 1 is a set of notices to use when a state of emergency has been declared. Appendix 2 is the set of forms to use when no state of emergency has been declared. These forms comply with California law as of the date of this publication. Appendix 3 has the relevant statutes so you can read the actual text of the law.

I would be grateful to know what challenges you face in your business, so I can develop forms and strategies to deal with them, and in the words of restoration guru Mark Springer, "leave this industry better than I found it." Please email me at EdCross@EdCross.com with your thoughts, issues, and unvarnished criticism. Working together, we can develop strategies to make your business easier, less stressful, and more profitable.

Thank you for reading this book, but most of all thank you for the opportunity to serve this industry, which I have known and loved for a quarter of a century.

At your service,

A handwritten signature in blue ink, appearing to read 'Ed Cross', with a stylized flourish at the end.

Ed

PART ONE: THE RIGHT TO CANCEL IN CALIFORNIA

Understanding California's Right to Cancel

Decades ago, many states developed a series of consumer-protection statutes that provide a right to cancel contracts executed in the customer's residence. Not surprisingly, California was one of the pioneers of the legislation. The State indicated that the purpose of this legislation is "to protect consumers against the type of pressures that typically arise when a salesman appears at buyer's home which pressures may arise regardless of whether buyer invited seller to call at the buyer's residence."

Cancellation and Rescission

The legislation resulted in a series of rights that allow customers to cancel ("rescind") contracts. Technically, service contracts can always be terminated, so it is more useful to think of the right of cancellation more like a temporary "cooling off" period.



The Difference Between Cancellation and Termination

The well-drafted restoration contract will contain a reservation of the right for the contractor to terminate services if the customer fails to timely pay. When the contractor terminates the contract, the goal is not to waive the other rights under the contract, such as the right to compensation for collection costs. Instead, the goal is to simply *stop* work and collect payment for

services rendered up to that point. If the contractor is not paid in full, the contractor fully intends to enforce the rights under the contract. That's because the contract has been terminated, rather than "canceled."

Most courts treat canceled contracts as though they never happened at all. This can lead to a bad outcome for the contractor. When I draft a restoration contract, I include a provision stating that if the customer does not timely pay, the contractor is entitled to a number of "extras," such as compensation for collection costs, attorneys' fees, court costs, expert fees, administrative services charges or late charges, and a significant interest rate. The prevailing party in California litigation is not entitled to recover attorneys' fees absent a specific provision in a contract signed by the customer. In my experience, these extras can be the tipping point that motivates a customer to pay, particularly if the annual interest rate is 18% on top of annual service charges of 10%. The debt escalates at the rate of 28% per year, and that's before legal costs. The point is that we don't want our contracts canceled (or found void, which has the similar effect).

If you need to stop work because you're not getting paid, provide a "notice of termination of service due to non-payment." Don't say "the contract is canceled."

There is extensive discussion below about waiving the right to cancel, as it causes considerable confusion. However, even if the right to *cancel* is waived, the customer still retains the right to *terminate* the contract. In other words, once the customer forbids the contractor from entering the property, the contractor would be guilty of trespass for entering. A little known fact is that if a customer wrongfully terminates a contract, the contractor may be entitled to recover the profit that *would* have been earned if the contractor had been permitted to complete the project, as well as the value of services rendered up to the date of the termination. Most contractors leave money on the table because they do not pursue this remedy.

When a California contract is canceled, a "rescission" occurs. Rescission is typically followed by restitution, whereby each party returns to the other whatever was received per the contract. In other words, the goal is to undo the transaction entirely. Of course, contractors can't take back the services they have rendered (although some may have wanted to put extracted water back into houses of deadbeat customers). If rescission occurs after services are rendered, and the contractor is compelled to return the money received, it results in a windfall to the customer. It's not like the purchase of a lawnmower that you can return to Home Depot and get your money back. The outcome is unfair to the contractor, particularly when emergency service is involved. More on that later.

Why is there a Right to Cancel?

The purpose of a right to cancel a consumer contract is to provide a "cooling off" period. It's based on the notion that once victims recover from a presentation by a silver-tongued snake

oil salesman, they will come to their senses and realize they want no part of the transaction. Oddly, the State of California believes that consumers are more vulnerable to chicanery in their own homes as opposed to the providers' places of business. If "a man's home is his castle," as the old saying goes, one might assume he would have the better ability to control it, but the State did not ask my opinion. Instead, it invoked a law stating that there is no right to cancel contracts negotiated at the contractor's place of business. Everywhere else, including the local coffee shop, the consumer has the right to cancel.

Simple, right?

Wrong.

The rules are complex and a huge percentage of California contractors fail to follow them as rigidly as the state requires. They sometimes find themselves in court before a judge who declares the contract "illegal" and the Contractors State License Board imposes disciplinary action against their licenses, even when it appears to be a victimless crime. Citations are like a scarlet letter on contractor's licenses that impair a contractor's image and can reduce sales. The goal of this book is to put the rules into plain English and help you formulate a practical strategy to avoid a reputation-killing citation on your contractor's license, and the expense of defending yourself in court.



The Right to Cancel Applies to "Home Solicitation Contracts"

A "home solicitation contract," as used in Civil Code section 1689.7, means "any contract, whether single or multiple, ... for the sale, lease, or rental of goods or services or both, made at other than appropriate trade premises in an amount of twenty-five dollars (\$25) or more, including

any interest or service charges.” (Civ. Code, § 1689.5, subd. (a).) “Goods” means “tangible chattels bought for use primarily for personal, family, or household purposes, ... and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of the real property whether or not severable therefrom....” “Services” means “work, labor, and services, including, but not limited to, services furnished in connection with the *repair, restoration, alteration, or improvement of residential premises....*” (Civ. Code, § 1689.5, subd. (d), emphasis added.) The California Court of Appeal has defined “repair” as fixing what is broken or healing what is injured, and “restoration” as the act of refitting a structure for its original use, even though nothing in its present state is broken or unsound. However, the CSLB defines “service” and “repair” in ways that go beyond their statutory and dictionary meanings. Ambiguities in these consumer protection laws are construed *against* contractors. As one court noted, “it is the public, not the licensee, that deserves the benefit of any doubt.”

Do Not Give a Notice of the Right to Cancel to Commercial Customers

Businesses get very little protection when they engage a contractor. Many otherwise sophisticated contractors erroneously provide a Notice of the Right to Cancel to commercial customers. The rule that requires the Notice is strictly a *consumer protection* statute.

The right of cancellation only applies to residential projects and should not even be discussed on commercial projects. A commercial customer could theoretically try to take advantage of a “right to cancel” inadvertently included in a contract package, even if given in error.

The Notice of the Right to Cancel and two copies of the “Notice of Cancellation” must be given to all “residential customers.”

What is a “Residential” Customer?

Although the right to rescission exists to protect consumers, it appears that CSLB may take the position that a residential customer is *anyone* who contracts for services to be performed in property designed to be a residence, even if unoccupied. The law is designed to protect consumers, but CSLB may attempt to argue that a “residential customer” could be a property manager, a real estate investor, a homeowners association, a landlord, or a giant corporation that owns multi-family housing across the country. To avoid this risk, look to the nature of the property, rather than the nature of the customer, to determine if the right to cancel may apply.

Unfortunately, to strictly comply with the CSLB’s expectations, one must follow all the consumer protection laws, including the Home Improvement Contract Law, and provide the Notice of the Right to Cancel, for all contracts concerning residential property, apparently without regard to the character of the customer. Through efforts of the Restoration Industry Association’s Advocacy & Government Affairs (AGA) Committee, this will hopefully change one day. But that day will not come without sufficient funding to hire a lobbyist. All contractors should invest in the AGA by visiting RestorationIndustry.org or simply clicking [here](#). Many hands make light work, and the guideline investment is only \$100 per one million dollars in annual revenue, which is very affordable.

Restorers Must Understand the Three Different Cancellation Periods

The general rule is that residential customers are afforded **three business days** to cancel contracts entered in their homes, unless they are age 65 or older, in which case, they have **five business days** to cancel.

However, if the work will address damage caused in a sudden catastrophic event for which a state of emergency has been declared, home solicitation contracts executed within seven days of the disaster are void unless the customer or the customer's agent or insurance representative solicited the contract or offer at the contractor's place of business. A telephone call from the customer to the contractor satisfies the "solicitation" requirement of this provision. In such an emergency, the customer has **seven business days** to cancel, regardless of the customer's age. When a state of emergency has been declared, use the 7-Day Notice with customers of all ages. Use the "**Three (or Five) Day Notice**" if no state of emergency has been declared.

The legislature may have envisioned that contractors would use a different contract and set of notices for seniors but that is highly impractical. It would require restorers to make age inquiries, which is absurd, so I made the executive decision to merge the five-day scenario into my three-day form, which is included in the Appendix 2 of this book. I blended it all together and created a "Notice of Three or Five-Day Right to Cancel." Imagine the impact if your technician asks one of your female customers is she is 65 or over...and it turns out she is only 50. Don't go there.



What is a “Business Day”?

“Business day” means any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

Certain Home Improvement Contracts Need Revision as of January 1, 2021

In my experience, most contractors prefer to present residential customers with a series of one-page forms, as opposed to a single contract that spills over onto multiple pages. It is less intimidating and easier to explain one page at a time. Our standardized [California Cleaning & Restoration Contract Package](#) is organized in this way and includes a script to present each form to the customer. We find it particularly helpful to present forms one at a time, especially for customers with limited attention spans.

The Notice of the Right to Cancel must be provided in immediate proximity to the owner's signature. In the form included with this book, the Notice includes a signature block for the customer to acknowledge receipt of the notice. This is because we ordinarily present the Notice separately from the contract.

For those who wish to attach the Notice of the Right to Cancel to the contract, the contract must state the following, in at least 12-point boldface type, if the customer is age 65 or older:

“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 Five-Day Right to Cancel.’”

If the customer younger than 65, then the paragraph above should state that the customer has three days to cancel. However, rather than having two sets of contracts (one for seniors), our standardized forms blend the three and five-day concepts into one paragraph. The customer can easily find which deadline applies to them and we avoid the age discussion altogether.

The Core Requirement: Notice

Most importantly, the rules require a seller of goods or services to provide written notice to the consumer of the right to cancel. The Notice must be taken verbatim from the California Civil Code. The Notices provided with this book comply with California law as of the date of this publication. Check with counsel to ensure your forms are current.

As explained above, the statute imposes a deadline on the customer to cancel the contract within a certain number of days, depending on certain factors. However, if the contractor fails to provide proper notice of the right to cancel, there is no deadline and the customer can cancel the contract at any time, even long after the project is complete, and the contractor has been paid.

The Notice of the Right to Cancel and Notice of Cancellation must be provided in the same

language used in the principal sales presentation.

Notice Must Be Given in Emergencies!

Contrary to popular belief, the Notice of the Right to Cancel must be given to the customer on all California residential projects, *including emergencies*. The only exception is where the contract is executed at the contractor's place of business, which does not occur on a typical restoration project. The three-page "Cancellation Package" (consisting of the Notice of the Right to Cancel and two copies of the Notice of Cancellation) must be given to all residential customers in emergencies and non-emergencies. The right to cancel cannot be waived unless the work qualifies as an emergency.

Waiver of the Right to Cancel

Fortunately, California, like most states, allows the customer to waive the right to cancel in the event of an emergency and proceed with mitigation and other services that must be performed to address conditions which pose an immediate threat of harm to persons and property. Without a waiver, the contractor is at risk of serious payment problems in the event the customer attempts to cancel the contract within the statutory cancellation period. ***The waiver of the right to cancel is a vital part of the emergency mitigation process.*** Without it, urgent services would be greatly delayed, leading to secondary property damage, potential mold contamination, cross-contamination of unaffected areas, health hazards, increased repair costs, unnecessary additional living expenses (ALE), and a host of other economic woes for the consumer and the insurer.

Special Procedure to Waive the Right to Cancel

The right to cancel can be waived if—and only if:

- (1) The contract is initiated by the buyer or his agent or insurance representative;

and
- (2) The customer receives proper notice of the right to cancel following the statutory form (all three pages);

and
- (3) The services are immediately necessary for the protection of persons or property;

and
- (4) The customer gives the contractor a separate written statement, signed and dated by the customer, describing the damage that requires the immediate remedy, and expressly acknowledges

and **waives** the statutory right to cancel.

A waiver is unenforceable unless the work is intended to directly address emergency circumstances which pose an immediate threat to persons or property. Thus, *many mold remediation projects do not qualify as emergencies, and contractors would be well-advised to wait three days to begin the work, or five days in the case of a customer who is age 65 or older.* But *always* provide the Notice of the Right to Cancel and two copies of the Notice of Cancellation.

The clock does not start to run on the deadline to cancel until the contractor provides the written Notice of the Right to Cancel!

A contractor in Sacramento once relied on a waiver of the right to cancel from a customer who stated that it was her “personal desire” for the contractor to begin the installation of hardwood floors immediately. After the floors were installed, she canceled the contract, and the contractor argued that she had waived the right to cancel. The contractor argued the work was urgent because the customer’s carpet had been removed, exposing particle board underlayment which was not intended for walking. The California Court of Appeal disagreed, finding that the notice of the right to cancel (shown below) did not comply with the code, and that the waiver was unenforceable because there was no bona fide **emergency**.

“Emergency” means the work must be performed to prevent an imminent risk of property damage or bodily injury. If the work is not urgent, it will not qualify as an emergency.

NOTICE OF RIGHT TO CANCEL	
Notice of Cancellation – Notice of Rescission	
<i>(California Civil Code 1689.7)</i>	
NAME _____	CONTRACT NO. _____
ADDRESS _____	TRANSACTION DATE: _____
CITY _____	STATE _____ ZIP _____
YOU MAY CANCEL THIS TRANSACTION, WITHOUT PENALTY OR OBLIGATION, WITHIN THREE (3) DAYS FROM THE ABOVE TRANSACTION DATE	
NOTICE OF CANCELLATION:	
You may cancel this transaction, without penalty or obligation, within three days from the above transaction date. If you cancel this home improvement contract, any payments made by you under the home improvement contract and any negotiable instrument executed by you will be returned within ten business days following receipt by the independent contractor of your cancellation notice, and any security interest arising out of this transaction will be cancelled. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice of cancellation no later than _____ to:	
Handyman Connection 9722 Fair Oaks Blvd., Ste E. Fair Oaks, CA 95628 (916) 863-6633	I hereby cancel this transaction _____ Date _____
	Customer's Signature _____
	Customer's Signature _____

Although the example above clearly states that the customer had the right to cancel the contract without penalty or obligation within three days, a citation was placed on the contractor’s

license and affirmed by the Court of Appeals because the notice provided by the Sacramento contractor did not follow the statutory form. *“Close enough” isn’t.*

It is worth reiterating that the Cancellation Package (consisting of three pages of notices) must be provided to all residential customers, regardless of whether the customer invited the contractor to make a sales call to the property.

As explained above, a customer can always *terminate* a service contract, so the waiver of the cooling off period is not a waiver of termination rights. In other words, the customer can order the contractor to stop work without voiding the contractor’s rights under the contract. The waiver of the cooling off period primarily means that the contractor cannot be barred from payment for the first three days of authorized work, or five days if the customer is age 65 or older.



Cancellation within three days is rare. If the customer refuses to waive the right to cancel in an emergency, or you are suspicious about a customer, seriously consider declining the work. If you choose to proceed, and the work is not urgent, try to start work after expiration of the customer’s deadline to cancel, but keep in mind there is no deadline if you don’t give the statutory notice of the right to cancel.

What if the Customer Gives Notice of Cancellation?

A contractor who receives notice of cancellation should contact legal counsel immediately to determine if the contractor has the right to demand return of certain goods. If a demand for return is not made within 20 days after the buyer’s cancellation of a home improvement contract, the goods become the property of the customer.

Contractor Waives Compensation if the Contract is Canceled?

Unless the customer has waived the right to cancel, under California law, in many cases, the contractor faces serious potential problems getting paid for work done during the cooling off period. Civil Code 1689.11, provided in Appendix 3, states, among other things:

If the seller has performed any services pursuant to a home solicitation contract or offer prior to its cancellation, the seller is entitled to **no compensation**. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered. (Emphasis added.)

In that regard, the California legislature writes:

An unfair sales practice unique to home improvement sales ‘spiking

the job' will be prevented by this provision of the act. In this sales tactic, the salesman who has sold siding, for example, will immediately tear off portions of the old siding replacing it with a few sections of new siding before returning to complete the job. If in the interim the buyer realizes he has been duped, he normally will feel compelled to go along with the transaction since otherwise he would have to find someone else to repair his home. Section 1689.11(c) of the Civil Code, besides providing for no compensation in such a case, requires the seller to 'restore the property to substantially as good a condition as it was at the time the services were rendered.'

Does “No Compensation” mean “No Compensation”?

Once the transaction is canceled, the contractor may be required to return any payments made by the customer within 10 days. However, in some cases, where it appears that leaving the contractor with no compensation would result in gross unfairness, courts have allowed contractors to recover if they have substantially completed the work, particularly if it was performed over a long period of time, and it does not appear that the contractor spiked the job. ***The recovery is not based on the contract, because the contract is canceled.*** Therefore, contract terms such as the right to attorneys' fees and late fees would be inapplicable and those items would not be recoverable. The recovery is based on the legal theory of *quantum meruit*, which is the principle that the law *implies* a promise to pay for services performed in circumstances where it is obvious that the services were not gratuitously rendered. The amount of the recovery under *quantum meruit* is not the contract price; in fact, the contractor's price list is irrelevant. The recovery would instead be for the reasonable value of services rendered, i.e., the market value of the work. Many insurance professionals consider Xactimate prices to be the market value of the work, a contention that is hotly contested, as revealed in [my November 20, 2019 discussion with Bill Loveland](#), one of the founders of Xactware.

PART TWO: HOW TO GIVE PROPER NOTICE AND OBTAIN A WAIVER

Selecting the Proper Form

Another confusing factor is that the State requires that two different kinds of notices be provided to every customer: the “Notice of the Right to Cancel” and [the customer's] “Notice of Cancellation.” The Notice of Cancellation is a form for the customer to use later if the customer elects to cancel. If it were signed at the time the contract is signed, then no contract is formed and no work should be performed. But the customer *should* sign the bottom of the “Notice of the Right to Cancel” to acknowledge receipt of the form. That signature is in addition to the signature that accompanies the waiver, if any.



Two Notice forms are provided with this book: a “7-Day” Notice (Appendix 2) for use when a state of emergency has been declared; and a “3 or 5-Day” Notice (Appendix 3) for use when no state of emergency has been declared. The duration of the cooling off period depends on the nature of the project, and the customer, as explained in Part One.



Before using the Notices, review the California Civil Code Sections in the *Selected California Home Improvement Statutes*, in Appendix 1. All forms should be evaluated and updated as necessary at least once per year.

Understanding the Two Component Parts of the Cancellation Package

Before commencing any type of residential project in California for more than \$750, the contractor must always provide the customer with three pages of forms dedicated to the right to cancel. There are no exceptions for emergencies or anything else. Those three pages consist of the applicable “Notice of the Right to Cancel” and two copies of the “Notice of Cancellation.” The forms provided with this book. We refer to the three pages collectively as the “Cancellation Package.”

- [1] ***Page 1: Notice of the “3 or 5-Day” or “7-Day” Right to Cancel:*** The 3-Day and 7-Day forms are organized the same way: into four parts and includes to notices: the first Notice (in the top box) is the statutory notice of the right to cancel. The second box on the first page is the waiver (if any) of the right to cancel in emergency situations. The bottom section of the first page is simply to confirm the customer *received copies* of the form. It should be filled in regardless of whether the project is an emergency and regardless of whether the customer has waived the right to cancel.

- [2] **Pages 2 and 3: Duplicate Copies of the Notice of Cancellation:** One should not confuse the Notice of the *Right to Cancel* with the Notice of *Cancellation*. They are distinct and both are required, and the contractor must deliver *two* duplicate copies of the Notice of Cancellation. Those two pages are for use only if the customer intends to cancel, which is not permitted if the customer has waived the right to cancel. Some contractors only provide one of the two notices, incorrectly assuming they are in compliance.

Steps to Prepare the Package

1. **Prepare Template:** Every set of cancellation notices requires the contractor's name in on the each of the three pages. Company information should be filled in all three locations before the forms are printed.
2. **Execute the Home Improvement Contract:** "Home Improvement Contracts" are required, even for emergency service, and even if no repairs or reconstruction will be performed. Code-compliant contracts are available from [The Restoration Contract Store](#).
3. **Choose the Proper Cancellation Package:** Use the "7-Day" Cancellation Package if a state of emergency has been declared and the work is intended to address conditions caused by the emergency. In all other cases, use the "3 or 5-Day" Notice of the Right to Cancel, regardless of the age of the customer.

PLAY VIDEO

Fill out forms

Notice of Three or Five-Day Right to Cancel

You, the buyer, have the right to cancel this contract within three business days, or five days if you are age 65 or older. 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.

Waiver of Right to Cancel

I, the Customer, hereby certify and affirm that this contract is executed in connection with making of emergency or immediately necessary repairs that are necessary for the immediate protection of persons or real or personal property. I hereby state that the following emergency exists, requiring immediate attention:

Pursuant to Section 1605.13 of the California Civil Code, I acknowledge and hereby WAIVE all rights to cancel this sale (agreement) within three days. If I cancel the contract, (Contractor Name) will be entitled to payment (at contract price) for the services performed up to the time of cancellation.

Print Customer Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Signature: _____ Date: _____

► We received two completed copies of the attached Notice of Cancellation form on the following date: _____

"Customer(s)" "Contractor(s)"

Check one: ☐ I am a contractor and I am providing this form to my customer(s). ☐ I am a customer and I am providing this form to my contractor.

Name of Contractor: _____

Name of Customer: _____

1-15-21 © 2021 E. Coors (916) 775-4002 CONSULT AN ATTORNEY TO VERIFY THE FORM FITS YOUR PURPOSE

6:54

How to Fill Out and Execute the Notice of the Right to Cancel (Page 1 of the Cancellation Package)

- 1. Waiver of the Right to Cancel:** See the explanation of the *Special Procedure to Waive the Right to Cancel*, above.

If the work is intended to address a bona fide emergency, legibly fill in the customer's contact information in the "Waiver" box. If the work is not intended to address an emergency, leave the entire "Waiver" box blank, but get the customer's signature in the acknowledgement at the bottom of the form to confirm the customer received the Notice.

In the blank space in the waiver, have the customer write a list of the conditions in the property and facts that constitute an emergency situation that requires immediate attention. I do not recommend that you type in the explanation of the emergency. A contractor can assist the customer with the choice of words, but preferably, the statement will be in the customer's (or agent's) handwriting. Think of it as the "personal statement" of the customer.

Example: "house is flooded and water must be extracted to avoid contamination and additional damage."

Waiver of Right to Cancel			
I, the Customer, hereby certify and affirm that this contract is executed in connection with making of emergency or immediately necessary repairs that are necessary for the immediate protection of persons or real or personal property. I hereby state that the following emergency exists, requiring immediate attention:			
<hr/>			
<hr/>			
<hr/>			
Pursuant to Section 1689.13 of the California Civil Code, I acknowledge and hereby WAIVE all rights to cancel this sale (agreement) within three days. If I cancel the contract, (Contractor Name) will be entitled to payment (at contract prices) for the services performed up to the time of cancellation.			
Print Customer Name: <hr/>			
Address: <hr/>			
City: <hr/>		State: <hr/>	Zip: <hr/>
Signature: <hr/>		Date: <hr/>	

- 2. Determine Who Will Sign:** Each individual who signs the Home Improvement Contract should sign the Notice of the Right to Cancel to confirm receipt of the Notice. Ideally, the Home Improvement Contract will be signed by more than one financially responsible party. This can be important in collections, particularly where the property is owned by more than one person. Do not presume the person signing the contract will not declare bankruptcy. Restorers have been left holding the bag many times.

3. Prepare the Signature Block to Confirm the Customer's Receipt of the Package:

- a. The signature block at the bottom that follows “We received two completed copies of this form” should be filled in and signed regardless of whether the right to cancel has been waived. The statute stresses the importance of providing the customer with the notice and this section provides the proof; fill in the date you provide the form.
- b. Once the identities of the signing parties have been determined, legibly print the name of each in the signature block. Do not ask customers to print their names because many do not have legible handwriting.
- c. *Before providing the form for customer signature:* Check the “customer” or “agent” box in the signature block(s) depending on whether the person signing the form is the person(s) responsible for the payment, or is acting as an authorized agent of the responsible party.

The customer(s) sign the acknowledgement of receipt in all cases:

We received two completed copies of the attached Notice of Cancellation form on the following date: _____.	
“Customer(s)”	“Customer(s)”
Signature. Check one: <input type="checkbox"/> Customer; <input type="checkbox"/> Customer's Agent	Signature. Check one: <input type="checkbox"/> Customer; <input type="checkbox"/> Customer's Agent
Print Name	Print Name



Do not expect the signing party understand the difference between “customer” and “agent,” or to check the correct box. For important information about the definition of “customer” and concept of agency, see the instructions that accompany the Service Agreement.

- d. Print the name of the contractor's representative in the space provided at the bottom of the form. This is important because this person is a witness, and may need to be located years later.

How to Fill Out and Execute the Notice of Cancellation (Pages 2 and 3 of the Cancellation Package)

1. **Notice of Cancellation:** The following instructions apply to the second and third pages of each “Cancellation Package”:
 - a. Date of Transaction: In all cases, fill in the “Date of Transaction” in the upper right corner on both the second and third pages of the Package (the “Notice of Cancellation”):

NOTICE OF CANCELLATION

Date of Transaction

b. Calculate the Deadline:

- i. *State of Emergency:* If the 7-Day Notice is being used, the deadline is seven “business days” after the date of the transaction referenced above. Insert that deadline in the space provided.

“**Business day**” means any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

- ii. *No State of Emergency:* Calculate the third “business day” after the “Date of Transaction” *and* the fifth “business day” and write both those dates in the space provided.

Date (3 business dates from transaction date, if you are under age 65)

Date (5 business dates from transaction date, if you are age 65 or older)

- a. In all cases, fill in your company’s name and address on both the second and the third pages of the Package:

to: _____
Contractor Name

at: _____
Contractor Address

- c. “**I hereby cancel**”: The customer does not sign or date this, or write anything in the top box unless and until he or she wishes to cancel the transaction. Do not ask the customer to sign the Notice of Cancellation (unless and until you want the job canceled):

I hereby cancel this transaction:	
_____	_____
Customer Signature	Date

- b. Give the customer a copy of all three pages.

In Closing

If you've made it this far in this book, you're probably telling yourself the system is too complicated, or if there should be any cooling off periods at all. Cooling off periods are good for consumers and bad for sellers. Does the benefit of these laws outweigh the problems? This set of laws is based on the premise that consumers are more vulnerable to high pressure sales tactics if they are in their own homes. However, some may believe the opposite. The cancellation protections do not apply when the buyer is in the seller's place of business. Are consumers in a stronger position when they are out of their "element"?

The restoration industry needs to have a voice before state legislatures when laws like this are passed. Unfortunately, as of the date of this publication, there is no lobbyist for the restoration industry, which can result in bad outcomes for this industry. The Restoration Industry Association (RIA) is the industry's oldest, largest, and best-funded trade association for the industry. As its Restoration Advocate, I urge you to [join the RIA](#) and invest in its Advocacy and Government Affairs (AGA) Committee which exists to level the playing field, legally and financially, for restoration contractors. Our ultimate goal is to raise enough funds to hire a lobbyist to help restorers address issues like the ones explained in this book.

This is the first in a series of books. Please keep an eye on TheRestorationLawyer.com for more publications like this.

I would be grateful for your candid assessment of this book, and for subjects for future books. Please email me at EdCross@EdCross.com and let me know how I can help.

Thank you for the opportunity to represent the restoration industry.

Respectfully,



Ed

APPENDIX 1: Cancellation Package for Use When a State of Emergency Has Been Declared

Notice of Seven-Day Right to Cancel

You, the buyer, have the right to cancel this transaction, without any penalty or obligation, within seven business days from the above date. 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 them, 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.

Waiver of Right To Cancel [FOR EMERGENCIES ONLY]

I, the Customer, hereby certify and affirm that this contract is executed in connection with making of emergency or immediately necessary repairs that are necessary for the immediate protection of persons or real or personal property. I hereby state that the following emergency situation exists, requiring immediate attention:

Pursuant to Section 1689.13 of the California Civil Code, I acknowledge and hereby WAIVE all rights to cancel this sale (agreement) within seven days. If I cancel the contract, (*Contractor Name*) will be entitled to payment (at contract prices) for the services performed up to the time of cancellation.

Print Customer Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Signature: _____ Date: _____

I received two completed copies of the attached Notice of Cancellation form on the following date: _____.

“Customer(s)”

“Customer(s)”

Signature. Check one: ☐ Customer; ☐ Customer's Agent

Signature. Check one: ☐ Customer; ☐ Customer's Agent

Print Name and Title

Print Name and Title

NOTICE OF CANCELLATION

Date of Transaction

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: _____
Contractor Name

at: _____
Contractor Address

not later than midnight on _____
Date (7 business dates from transaction date, above)

I hereby cancel this transaction:

Customer Signature

Date

NOTICE OF CANCELLATION

Date of Transaction

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: _____
Contractor Name

at: _____
Contractor Address

not later than midnight on _____
Date (7 business dates from transaction date, above)

I hereby cancel this transaction:

Customer Signature

Date

APPENDIX 2: Cancellation Package for Use When No State of Emergency Has Been Declared

Notice of Three or Five-Day Right to Cancel

You, the buyer, have the right to cancel this contract within three business days, or five days if you are age 65 or older. 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.

Waiver of Right to Cancel [FOR EMERGENCIES ONLY]

I, the Customer, hereby certify and affirm that this contract is executed in connection with making of emergency or immediately necessary repairs that are necessary for the immediate protection of persons or real or personal property. I hereby state that the following emergency exists, requiring immediate attention:

Pursuant to Section 1689.13 of the California Civil Code, I acknowledge and hereby WAIVE all rights to cancel this sale (agreement) within three days. If I cancel the contract, (**Contractor Name**) will be entitled to payment (at contract prices) for the services performed up to the time of cancellation.

Print Customer Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Signature: _____ Date: _____

We received two completed copies of the attached Notice of Cancellation form on the following date: _____.

“Customer(s)”

“Customer(s)”

Signature. Check one: ☐ Customer; ☐ Customer's Agent

Signature. Check one: ☐ Customer; ☐ Customer's Agent

Print Name

Print Name

Print Name of Contractor Representative:

NOTICE OF CANCELLATION

Date of Transaction

You may cancel this transaction, without any penalty or obligation, within three business days from the above date, or five days if you are age 65 or older.

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: _____
Contractor Name

at: _____
Contractor Address

not later than midnight on _____
Date (3 business dates from transaction date, if you are under age 65)

or not later than midnight on _____
Date (5 business dates from transaction date, if you are age 65 or older)

I hereby cancel this transaction:

Customer Signature

Date

NOTICE OF CANCELLATION

Date of Transaction

You may cancel this transaction, without any penalty or obligation, within three business days from the above date, or five days if you are age 65 or older.

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: _____
Contractor Name

at: _____
Contractor Address

not later than midnight on _____
Date (3 business dates from transaction date, if you are under age 65)

or not later than midnight on _____
Date (5 business dates from transaction date, if you are age 65 or older)

I hereby cancel this transaction:

Customer Signature

Date

APPENDIX 3: Selected California Statutes

California Business & Professions Code Section 7028.16
State of emergency; acting as contractor without license; penalty

A person who engages in the business or acts in the capacity of a contractor, without having a license therefor, in connection with the offer or performance of repairs or improvements to a residential or nonresidential structure or property, or by adding to, or subtracting from, grounds in connection therewith, for damage or destruction caused by a natural disaster for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States, shall be punished by a fine up to ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or for two or three years, or by both that fine and imprisonment, or by a fine up to one thousand dollars (\$1,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. In addition, a person who utilized the services of the unlicensed contractor is a victim of crime regardless of whether that person had knowledge that the contractor was unlicensed.

California Business & Professions Code Section 7055
Branches of contracting business

For the purpose of classification, the contracting business includes any or all of the following branches:

- (a) General engineering contracting.
- (b) (1) General building contracting.
- (2) Residential remodeling contracting.
- (c) Specialty contracting.

California Business & Professions Code Section 7150.1
Home improvement contractor, including swimming pool contractor, defined

A home improvement contractor, including a swimming pool contractor, is a contractor as defined and licensed under this chapter who is engaged in the business of home improvement either full time or part time. A home improvement contractor shall satisfy all requirements imposed by this article.

California Business & Professions Code Section 7151

Home improvement; home improvement goods or services; definitions

“Home improvement” means the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property, as well as the reconstruction, restoration, or rebuilding of a residential property that is damaged or destroyed by a natural disaster for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States, and shall include, but not be limited to, the construction, erection, replacement, or improvement of driveways, swimming pools, including spas and hot tubs, terraces, patios, awnings, storm windows, landscaping, fences, porches, garages, fallout shelters, basements, and other improvements of the structures or land which is adjacent to a dwelling house. “Home improvement” shall also mean the installation of home improvement goods or the furnishing of home improvement services.

For purposes of this chapter, “home improvement goods or services” means goods and services, as defined in Section 1689.5 of the Civil Code, which are bought in connection with the improvement of real property. Such home improvement goods and services include, but are not limited to, carpeting, texture coating, fencing, air conditioning or heating equipment, and termite extermination. Home improvement goods include goods which are to be so affixed to real property as to become a part of real property whether or not severable therefrom.

California Business & Professions Code Section 7151.2

Home improvement contract defined

“Home improvement contract” means an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner or between a contractor and a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, if the work is to be performed in, to, or upon the residence or dwelling unit of the tenant, for the performance of a home improvement as defined in [Section 7151](#), and includes all labor, services, and materials to be furnished and performed thereunder. “Home improvement contract” also means an agreement, whether oral or written, or contained in one or more documents, between a salesperson, whether or not he or she is a home improvement salesperson, and (a) an owner or (b) a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, which provides for the sale, installation, or furnishing of home improvement goods or services.

California Business & Professions Code Section 7152

Home improvement salesperson defined; persons not required to register; listing as personnel of licensee required for exemption

(a) “Home improvement salesperson” is a person employed by a home improvement contractor licensed under this chapter to solicit, sell, negotiate, or execute contracts for home improvements, for the sale, installation or furnishing of home improvement goods or services, or of swimming pools, spas, or hot tubs.

(b) The following shall not be required to be registered as home improvement salespersons:

- (1) An officer of record of a corporation licensed pursuant to this chapter, or a manager of record of a limited liability company licensed pursuant to this chapter.
- (2) A general partner listed on the license record of a partnership licensed pursuant to this chapter.
- (3) A qualifying person, as defined in [Section 7025](#).
 - (4) A salesperson whose sales are all made pursuant to negotiations between the parties if the negotiations are initiated by the prospective buyer at or with a general merchandise retail establishment that operates from a fixed location where goods or services are offered for sale.
 - (5) A person who contacts the prospective buyer for the exclusive purpose of scheduling appointments for a registered home improvement salesperson.
 - (6) A bona fide service repairperson who is in the employ of a licensed contractor and whose repair or service call is limited to the service, repair, or emergency repair initially requested by the buyer of the service.

(c) The exemption to registration provided under paragraphs (1), (2), and (3) of subdivision (b) shall apply only to those individuals who, at the time of the sales transaction, are listed as personnel of record for the licensee responsible for soliciting, negotiating, or contracting for a service or improvement that is subject to regulation under this article.

California Business & Professions Code Section 7154

Employment of unregistered person; disciplinary action

A home improvement contractor who employs a person to sell home improvement contracts while such person is not registered by the registrar as a home improvement salesman as provided in this article, is subject to disciplinary action by the registrar.

California Business & Professions Code Section 7155

Violations by salesmen; suspension or revocation; disciplinary proceedings

Violation of any provision of this chapter by a home improvement salesman constitutes cause for disciplinary action. The registrar may suspend or revoke the registration of the home improvement salesman if he is found to be in violation. The disciplinary proceedings shall be conducted in accordance with the provisions of Chapter 5 (commencing with [Section 11500](#)) of [Part 1 of Division 3 of Title 2 of the Government Code](#).

California Business & Professions Code Section 7156

Violations; offense

It shall be a misdemeanor and a cause for disciplinary action to commit any of the following acts:

(a) For any salesperson to fail to account for or to remit to his or her employing contractor any payment received in connection with any home improvement transaction or any other transaction involving a work of improvement.

(b) For any person to use a contract form in connection with any home improvement transaction or any other transaction involving a work of improvement if the form fails to disclose the name of the contractor principal by whom he or she is employed.

California Business & Professions Code Section 7157

Compensation or reward for referral sales; exception; payments to or by third parties; violations; punishment

(a) Except as otherwise provided in subdivision (b), as a part of or in connection with the inducement to enter into any home improvement contract or other contract, which may be performed by a contractor, no person may promise or offer to pay, credit, or allow to any owner, compensation or reward for the procurement or placing of home improvement business with others.

(b) A contractor or his or her agent or salesperson may give tangible items to prospective customers for advertising or sales promotion purposes where the gift is not conditioned upon obtaining a contract for home improvement work if the gift does not exceed a value of five dollars (\$5) and only one such gift is given in connection with any one transaction.

(c) No salesperson or contractor's agent may accept any compensation of any kind, for or on account of a home improvement transaction, or any other transaction involving a work of

improvement, from any person other than the contractor whom he or she represents with respect to the transaction, nor shall the salesperson or agent make any payment to any person other than his or her employer on account of the sales transaction.

(d) No contractor shall pay, credit, or allow any consideration or compensation of any kind to any other contractor or salesperson other than a licensee for or on account of the performance of any work of improvement or services, including, but not limited to, home improvement work or services, except: (1) where the person to or from whom the consideration is to be paid is not subject to or is exempted from the licensing requirements of this chapter, or (2) where the transaction is not subject to the requirements of this chapter.

As used in this section “owners” shall also mean “tenant.”

Commission of any act prohibited by this section is a misdemeanor and constitutes a cause for disciplinary action.

California Business & Professions Code Section 7159

Home improvement contracts for specified transactions; contract requirements and content; form of contract; notices

(a)

- (1) This section identifies the projects for which a home improvement contract is required, outlines the contract requirements, and lists the items that shall be included in the contract, or may be provided as an attachment.
- (2) This section does not apply to service and repair contracts that are subject to Section 1689.5, if the contract for the applicable services complies with Sections 7159.10 to 7159.14, inclusive.
- (3) This section does not apply to the sale, installation, and servicing of a fire alarm sold in conjunction with an alarm system, as defined in Section 7590.1, if all costs attributable to making the fire alarm system operable, including sale and installation costs, do not exceed five hundred dollars (\$500), and the licensee complies with the requirements set forth in Section 7159.9.
- (4) This section does not apply to any costs associated with monitoring a burglar or fire alarm system.
- (5) Failure by the licensee, their agent or salesperson, or by a person subject to be licensed under this chapter, to provide the specified information, notices,

and disclosures in the contract, or to otherwise fail to comply with any provision of this section, is cause for discipline.

(b) For purposes of this section, “home improvement contract” means an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner or between a contractor and a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, if the work is to be performed in, to, or upon the residence or dwelling unit of the tenant, for the performance of a home improvement, as defined in Section 7151, and includes all labor, services, and materials to be furnished and performed thereunder, if the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars (\$500). “Home improvement contract” also means an agreement, whether oral or written, or contained in one or more documents, between a salesperson, whether or not they are a home improvement salesperson, and an owner or a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, which provides for the sale, installation, or furnishing of home improvement goods or services.

(c) In addition to the specific requirements listed under this section, every home improvement contract and any person subject to licensure under this chapter or their agent or salesperson shall comply with all of the following:

- (1) The writing shall be legible.
- (2) 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.
- (3)
 - (A) Before any work is started, the contractor shall give the buyer a copy of the contract signed and dated by both the contractor and the buyer. The buyer’s receipt of the copy of the contract initiates the buyer’s rights to cancel the contract pursuant to Sections 1689.5 to 1689.14, inclusive, of the Civil Code.
 - (B) 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.

- (4) The contract shall include a statement that, upon satisfactory payment being made for any portion of the work performed, the contractor, prior to any further payment being made, shall furnish to the person contracting for the home improvement or swimming pool work a full and unconditional release from any potential lien claimant claim or mechanics lien authorized pursuant to Sections 8400 and 8404 of the Civil Code for that portion of the work for which payment has been made.
- (5) A change-order form for changes or extra work shall be incorporated into the contract and shall become part of the contract only if it is in writing and signed by the parties prior to the commencement of any work covered by a change order.
- (6) The contract shall contain, in close proximity to the signatures of the owner and contractor, a notice stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.
- (7) If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.
- (8) The provisions of this section are not exclusive and do not relieve the contractor from compliance with any other applicable provision of law.

(d) A home improvement contract and any changes to the contract shall be in writing and signed by the parties to the contract prior to the commencement of work covered by the contract or an applicable change order and, except as provided in paragraph (8) of subdivision (a) of Section 7159.5, shall include or comply with all of the following:

- (1) The name, business address, and license number of the contractor.
- (2) If applicable, the name and registration number of the home improvement salesperson that solicited or negotiated the contract.
- (3) The following heading on the contract form that identifies the type of contract in at least 10-point boldface type: "Home Improvement."
- (4) The following statement in at least 12-point boldface type: "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."
- (5) The heading: "Contract Price," followed by the amount of the contract in dollars and cents.
- (6) If a finance charge will be charged, the heading: "Finance Charge," followed by the amount in dollars and cents. The finance charge is to be set out separately from the contract amount.

- (7) The heading: “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.
- (8) If a downpayment will be charged, the details of the downpayment shall be expressed in substantially the following form, and shall include the text of the notice as specified in subparagraph (C):
 - (A) The heading: “Downpayment.”
 - (B) A space where the actual downpayment appears.
 - (C) The following statement in at least 12-point boldface type:

“THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.”

- (9) If payments, other than the downpayment, are to be made before the project is completed, the details of these payments, known as progress payments, shall be expressed in substantially the following form, and shall include the text of the statement as specified in subparagraph (C):
 - (A) A schedule of progress payments shall be preceded by the heading: “Schedule of Progress Payments.”
 - (B) Each progress payment shall be stated in dollars and cents and specifically reference the amount of work or services to be performed and materials and equipment to be supplied.
 - (C) 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.”

- (10) The contract shall address the commencement of work to be performed in substantially the following form:
 - (A) A statement that describes what constitutes substantial commencement of work under the contract.
 - (B) The heading: “Approximate Start Date.”
 - (C) The approximate date on which work will be commenced.
- (11) The estimated completion date of the work shall be referenced in the contract in substantially the following form:
 - (A) The heading: “Approximate Completion Date.”
 - (B) The approximate date of completion.
- (12) If applicable, the heading: “List of Documents to be Incorporated into the Contract,” followed by the list of documents incorporated into the contract.
- (13) The heading: “Note About Extra Work and Change Orders,” 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 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.”

(e) Except as provided in paragraph (8) of subdivision (a) of Section 7159.5, all of the following notices shall be provided to the owner as part of the contract form as specified or, if otherwise authorized under this subdivision, may be provided as an attachment to the contract:

- (1) 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.”
 - (D) “(The name on the license or ‘This contractor’) is a limited liability company that carries liability insurance or maintains other security as required by law. You may call (the insurance company or trust company or bank) at ____ to check on the contractor’s insurance coverage or security.”
- (2) 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.”
- (3) 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 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 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.

- (4) A notice with the heading “Mechanics Lien Warning” 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 ‘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 they are 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 internet website 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."

(5) The following notice shall be provided in at least 12-point typeface:

"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 internet website at www.cslb.ca.gov

Call CSLB at 800-321-CSLB (2752)

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

(6)

(A) The notice set forth in subparagraph (B) and entitled "Three-Day

Right to Cancel,” or entitled “Five-Day Right to Cancel” for contracts with a senior citizen, shall be provided to the buyer unless the contract is:

- (i) Negotiated at the contractor’s place of business.
- (ii) Subject to the “Seven-Day Right to Cancel,” as set forth in paragraph (7).
- (iii) Subject to licensure under the Alarm Company Act (Chapter 11.6 (commencing with Section 7590)), provided the alarm company licensee complies with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

(B)

- (i) “Three-Day Right to Cancel

You, the buyer, have the right to cancel this contract within three business days. You may cancel by emailing, 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 them, 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.”

- (ii) References to “three” and “third” in the notice set forth in clause (i) shall be changed to “five” and “fifth,” respectively, for a buyer who is a senior citizen.

- (C) The notice required by this paragraph shall comply with all of 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 one of the following statements, as applicable:
 - (I) For a contract with a senior citizen: "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 Five-Day Right to Cancel.' "
 - (II) For all other contracts: "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.' "
- (vi)
 - (I) The notice shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which also shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain the following statement written in the same language, e.g., Spanish, as used in the contract:
 - (II)
"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)

(III) The reference to “three” in the statement set forth in subclause (I) shall be changed to “five” for a buyer who is a senior citizen.

(7)

(A) The following notice entitled “Seven-Day Right to Cancel” shall be provided to the buyer for any contract that is written for the repair or restoration of residential premises damaged by any sudden or catastrophic event for which a state of emergency has been declared by the President of the United States or the Governor, or for which a local emergency has been declared by the executive officer or governing body of any city, county, or city and county:

“Seven-Day Right to Cancel

You, the buyer, have the right to cancel this contract within seven business days. You may cancel by emailing, 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 them, 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."

- (B) The "Seven-Day Right to Cancel" notice required by this subdivision shall comply with all of 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 Seven-Day Right to Cancel.' "
 - (vi) The notice shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which shall also be attached to the agreement or offer to purchase and be easily detachable, and which shall contain the following statement written in the same language, e.g., Spanish, as used in 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)

(f) The five-day right to cancel added by the act that amended paragraph (6) of subdivision (e) shall apply to contracts entered into on or after January 1, 2021.

California Business & Professions Code Section 7159.5

§ 7159.5. Home improvement contract requirements relating to costs, charges, and payments; bonds; effect of noncompliance; penalties

This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, that is licensed or subject to be licensed pursuant to this chapter with regard to the transaction.

(a) Failure by the licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, to comply with the following provisions is cause for discipline:

- (1) The contract shall be in writing and shall include the agreed contract amount in dollars and cents. The contract amount shall include the entire cost of the contract, including profit, labor, and materials, but excluding finance charges.
- (2) If there is a separate finance charge between the contractor and the person contracting for home improvement, the finance charge shall be set out separately from the contract amount.
- (3) If a downpayment will be charged, the downpayment may not exceed one thousand dollars (\$1,000) or 10 percent of the contract amount, whichever is less.

- (4) If, in addition to a downpayment, the contract provides for payments to be made prior to completion of the work, the contract shall include a schedule of payments in dollars and cents specifically referencing the amount of work or services to be performed and any materials and equipment to be supplied.
- (5) Except for a downpayment, the contractor may neither request nor accept payment that exceeds the value of the work performed or material delivered.
- (6) Upon any payment by the person contracting for home improvement, and prior to any further payment being made, the contractor shall, if requested, obtain and furnish to the person a full and unconditional release from any potential lien claimant claim or mechanics lien authorized pursuant to Sections 8400 and 8404 of the Civil Code for any portion of the work for which payment has been made. The person contracting for home improvement may withhold all further payments until these releases are furnished.
- (7) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with paragraph (4).
- (8) A contractor furnishing a performance and payment bond, lien and completion bond, or a bond equivalent or joint control approved by the registrar covering full performance and payment is exempt from paragraphs (3), (4), and (5), and need not include, as part of the contract, the statement regarding the downpayment specified in subparagraph (C) of paragraph (8) of subdivision (d) of Section 7159, the details and statement regarding progress payments specified in paragraph (9) of subdivision (d) of Section 7159, or the Mechanics Lien Warning specified in paragraph (4) of subdivision (e) of Section 7159. A contractor furnishing these bonds, bond equivalents, or a joint control approved by the registrar may accept payment prior to completion. If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

(b) A violation of paragraph (1), (3), or (5) of subdivision (a) by a licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

- (1) An indictment or information against a person who is not licensed but who is required to be licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section, in accordance with paragraph (4) of subdivision (d) of Section 802 of the Penal Code, within four years from the date of the contract or, if the contract is not reduced to writing, from the date the buyer makes the first payment to the contractor.
- (2) An indictment or information against a person who is licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section, in accordance with paragraph (2) of subdivision (d) of Section 802 of the Penal Code, within two years from the date of the contract or, if the contract is not reduced to writing, from the date the buyer makes the first payment to the contractor.
- (3) The limitations on actions in this subdivision shall not apply to any administrative action filed against a licensed contractor.

(c) Any person who violates this section as part of a plan or scheme to defraud an owner or tenant of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars (\$500) nor more than twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States.

California Business & Professions Code Section 7159.6
Extra work or change order; enforceability conditions

- (a) An extra work or change order is not enforceable against a buyer unless the change order sets forth all of the following:
- (1) The scope of work encompassed by the order.
 - (2) The amount to be added or subtracted from the contract.
 - (3) The effect the order will make in the progress payments or the completion date.

(b) The buyer may not require a contractor to perform extra or change-order work without providing written authorization.

(c) Failure to comply with the requirements of this section does not preclude the recovery of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment.

(d) This section shall become operative on January 1, 2006.

California Civil Code Section 1689.5

Definitions

As used in Sections 1689.6 to 1689.11, inclusive, and in Section 1689.14, all of the following definitions apply:

(a) “Home solicitation contract or offer” means any contract, whether single or multiple, or any offer which is subject to approval, for the sale, lease, or rental of goods or services or both, made at other than appropriate trade premises in an amount of twenty-five dollars (\$25) or more, including any interest or service charges. “Home solicitation contract” does not include any contract under which the buyer has the right to rescind pursuant to Title 1, Chapter 2, Section 125 of the Federal Consumer Credit Protection Act (P.L. 90-321) and the regulations promulgated pursuant thereto.

(b) “Appropriate trade premises,” means premises where either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises.

(c) “Goods” means tangible chattels bought for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of the real property whether or not severable therefrom, but does not include any vehicle required to be registered under the Vehicle Code, nor any goods sold with this vehicle if sold under a contract governed by Section 2982, and does not include any mobilehome, as defined in Section 18008 of the Health and Safety Code, nor any goods sold with this mobilehome if either are sold under a contract subject to Section 18036.5 of the Health and Safety Code.

(d) “Services” means work, labor and services, including, but not limited to, services furnished in connection with the repair, restoration, alteration, or improvement of residential premises, or services furnished in connection with the sale or repair of goods as defined in Section 1802.1, and courses of instruction, regardless of the purpose for which they are taken, but does not include the services of attorneys, real estate brokers and salesmen, securities dealers or investment counselors, physicians, optometrists, or dentists, nor financial services offered by banks, savings

institutions, credit unions, industrial loan companies, personal property brokers, consumer finance lenders, or commercial finance lenders, organized pursuant to state or federal law, that are not connected with the sale of goods or services, as defined herein, nor the sale of insurance that is not connected with the sale of goods or services as defined herein, nor services in connection with the sale or installation of mobilehomes or of goods sold with a mobilehome if either are sold or installed under a contract subject to Section 18036.5 of the Health and Safety Code, nor services for which the tariffs, rates, charges, costs, or expenses, including in each instance the time sale price, is required by law to be filed with and approved by the federal government or any official, department, division, commission, or agency of the United States or of the state.

(e) “Business day” means any calendar day except Sunday, or the following business holidays: New Year’s Day, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas Day.

(f) “Senior citizen” means an individual who is 65 years of age or older.

California Civil Code Section 1689.6

Right to cancel home solicitation contracts or offers

(a)

- (1) Except for a contract written pursuant to Section 7151.2 or 7159.10 of the Business and Professions Code, in addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer until midnight of the third business day, or until midnight of the fifth business day if the buyer is a senior citizen, after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7.
- (2) In addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract written pursuant to Section 7151.2 of the Business and Professions Code until midnight of the third business day, or until midnight of the fifth business day if the buyer is a senior citizen, after the buyer receives a signed and dated copy of the contract or offer to purchase that complies with Section 1689.7 of this code.
- (3)
 - (A) In addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer to purchase written pursuant to Section 7159.10 of the Business and Professions

Code, until the buyer receives a signed and dated copy of a service and repair contract that complies with the contract requirements specified in Section 7159.10 of the Business and Professions Code and the work commences.

(B) For any contract written pursuant to Section 7159.10 of the Business and Professions Code, or otherwise presented to the buyer as a service and repair contract, unless all of the conforming requirements listed under subdivision (a) of that section are met, the requirements set forth under Section 7159 of the Business and Professions Code shall be applicable, regardless of the aggregate contract price, including the right to cancel as set forth under this section.

(4) The five-day right to cancel added by the act that amended paragraphs (1) and (2) shall apply to contracts entered into, or offers to purchase conveyed, on or after January 1, 2021.

(b) In addition to any other right to revoke an offer, any buyer has the right to cancel a home solicitation contract or offer for the purchase of a personal emergency response unit until midnight of the seventh business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7. This subdivision shall not apply to a personal emergency response unit installed with, and as part of, a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, which shall instead be subject to subdivision (a).

(c) In addition to any other right to revoke an offer, a buyer has the right to cancel a home solicitation contract or offer for the repair or restoration of residential premises damaged by a disaster that was not void pursuant to Section 1689.14, until midnight of the seventh business day after the buyer signs and dates the contract unless the provisions of Section 1689.15 are applicable.

(d) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.

(e) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(f) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the home solicitation contract or offer.

(g) "Personal emergency response unit," for purposes of this section, means an in-home

radio transmitter device or two-way radio device generally, but not exclusively, worn on a neckchain, wrist strap, or clipped to clothing, and connected to a telephone line through which a monitoring station is alerted of an emergency and emergency assistance is summoned.

California Civil Code Section 1689.7
Right to cancel; notices of cancellation

(a)

- (1) Except for contracts written pursuant to Sections 7151.2 and 7159.10 of the Business and Professions Code, in a home solicitation contract or offer, the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, shall be signed by the buyer, and except as provided in paragraph (2), shall contain in immediate proximity to the space reserved for the buyer's signature, a conspicuous statement in a size equal to at least 10-point boldface type, as follows:
 - (A) For a buyer who is a senior citizen: "You, the buyer, may cancel this transaction at any time prior to midnight of the fifth business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."
 - (B) For all other buyers: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."
- (2) The statement required pursuant to this subdivision for a home solicitation contract or offer for the purchase of a personal emergency response unit, as defined in Section 1689.6, that is not installed with and as part of a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) that has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, is as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."
- (3) Except for contracts written pursuant to Sections 7151.2 and 7159.10 of the Business and Professions Code, the statement required pursuant to this subdivision for the repair or restoration of residential premises damaged by a disaster pursuant

to subdivision (c) of Section 1689.6 is as follows: “You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

(4)

- (A) A home solicitation contract written pursuant to Section 7151.2 of the Business and Professions Code shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation. The contract, or an attachment to the contract that is subject to Section 7159 of the Business and Professions Code shall include in immediate proximity to the space reserved for the buyer’s signature, the following statement in a size equal to at least 12-point boldface type, which shall be dated and signed by the buyer:

“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.”

- (B) References to “three” and “third” in the statement set forth in subparagraph (A) shall be changed to “five” and “fifth,” respectively, for a buyer who is a senior citizen.

- (b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (1) the name and

address of the seller to which the notice is to be mailed, and (2) the date the buyer signed the agreement or offer to purchase.

(c)

- (1) Except for contracts written pursuant to Sections 7151.2 and 7159.10 of the Business and Professions Code, or except as provided in subdivision (d), 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:

"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)

- (2) The reference to “three” in the statement set forth in paragraph (1) shall be changed to “five” for a buyer who is a senior citizen.
- (d) Any agreement or offer to purchase a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act which has two or more stationary protective devices

used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, shall be subject to the requirements of subdivision (c), and shall be accompanied by the “Notice of Cancellation” required by subdivision (c), except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

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

- (e) A home solicitation contract written pursuant to Section 7151.2 of the Business and Professions Code for the repair or restoration of residential premises damaged by a disaster that is subject to subdivision (c) of Section 1689.6, shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation. The contract, or an attachment to the contract that is subject to Section 7159 of the Business and Professions Code shall include, in immediate proximity to the space reserved for the buyer’s signature, the following statement in a size equal to at least 12-point boldface type, which shall be signed and dated by the buyer:

“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.”

- (f) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of the buyer's right to cancel and the requirement that cancellation be in writing, at the time the home solicitation contract or offer is executed.
- (g) Until the seller has complied with this section the buyer may cancel the home solicitation contract or offer.
- (h) "Contract or sale" as used in subdivision (c) means "home solicitation contract or offer" as defined by Section 1689.5.
- (i) The five-day right to cancel added by the act that added subparagraph (A) to paragraph (1) and subparagraph (B) to paragraph (3) of subdivision (a), and paragraph (2) to subdivision (c) shall apply to contracts, or offers to purchase conveyed, entered into, on or after January 1, 2021.

California Civil Code Section 1689.8

Liens on real property; home solicitation contracts; offers for home improvement goods or services; retail installment sales

(a) Every home solicitation contract or offer for home improvement goods or services which provides for a lien on real property is subject to the provisions of Chapter 1 (commencing with [Section 1801](#)) of Title 2 of Part 4 of Division 3.

(b) For purposes of this section, "home improvement goods or services" means goods and services, as defined in [Section 1689.5](#), which are bought in connection with the improvement of real property. Such home improvement goods and services include, but are not limited to, burglar alarms, carpeting, texture coating, fencing, air conditioning or heating equipment, and termite extermination. Home improvement goods include goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part of real property whether or not severable therefrom.

California Civil Code Section 1689.9

Goods affixed to realty; effect of subsequent sale or encumbrance of realty

Where the goods sold under any home solicitation contract are so affixed to real property as to become a part thereof, whether or not severable therefrom, the buyer shall not have the right to cancel as provided in [Section 1689.6](#) or [Section 1689.7](#) if, subsequent to his signing such contract, he has sold or encumbered such real property to a bona fide purchaser or encumbrancer who was not a party to such sale of goods or to any loan agreement in connection therewith.

California Civil Code Section 1689.10

Tender by seller to buyer of payments or goods traded in; retention of and lien on goods delivered

(a) Except as provided in [Sections 1689.6 to 1689.11](#), inclusive, within 10 days after a home solicitation contract or offer has been canceled, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(b) If the downpayment includes goods traded in, the goods must be tendered in substantially as good condition as when received.

(c) Until the seller has complied with the obligations imposed by [Sections 1689.7 to 1689.11](#), inclusive, the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods for any recovery to which he is entitled.

California Civil Code 1689.11

Tender by buyer to seller of goods delivered by seller pursuant to contract or offer

(a) Except as provided in [subdivision \(c\) of Section 1689.10](#), within 20 days after a home solicitation contract or offer has been canceled, the buyer, upon demand, must tender to the seller any goods delivered by the seller pursuant to the sale or offer, but he is not obligated to tender at any place other than his own address. If the seller fails to demand possession of goods within 20 days after cancellation, the goods become the property of the buyer without obligation to pay for them.

(b) The buyer has a duty to take reasonable care of the goods in his possession both prior to cancellation and during the 20-day period following. During the 20-day period after cancellation, except for the buyer's duty of care, the goods are at the seller's risk.

(c) If the seller has performed any services pursuant to a home solicitation contract or offer prior to its cancellation, the seller is entitled to no compensation. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.

California Civil Code Section 1689.13

Conditions making Sections 1689.5, 1689.6, 1689.7, 1689.10, 1689.12 and 1689.14 not apply to a contract

Sections 1689.5, 1689.6, 1689.7, 1689.10, 1689.12, and 1689.14 do not apply to a contract that meets all of the following requirements:

- (a) The contract is initiated by the buyer or the buyer's agent or insurance representative.
- (b) The contract is executed in connection with making of emergency or immediately necessary repairs that are necessary for the immediate protection of persons or real or personal property.
- (c)
 - (1) The buyer gives the seller a separate statement that is dated and signed that describes the situation that requires immediate remedy, and expressly acknowledges and waives the right to cancel the sale within three, five, or seven business days, whichever applies.
 - (2) The waiver of the five-day right to cancel added by the act that amended paragraph (1) shall apply to contracts entered into, or offers to purchase conveyed, on or after January 1, 2021.

California Civil Code Section 1689.14

Repairs or restoration of residential premises damaged by a disaster

(a) Any home solicitation contract or offer for the repair or restoration of residential premises signed by the buyer on or after the date on which a disaster causes damage to the residential premises, but not later than midnight of the seventh business day after this date, shall be void, unless the buyer or his or her agent or insurance representative solicited the contract or offer at the appropriate trade premises of the seller. Any contract covered by this subdivision shall not be void if solicited by the buyer or his or her agent or insurance representative regardless of where the contract is made. For purposes of this section, buyer solicitation includes a telephone call from the buyer to the appropriate trade premises of the seller whether or not the call is in response to a prior home solicitation.

(b) As used in this section and [Section 1689.6](#), "disaster" means an earthquake, flood, fire, hurricane, riot, storm, tidal wave, or other similar sudden or catastrophic occurrence for which a state of emergency has been declared by the President of the United States or the Governor or for which a local emergency has been declared by the executive officer or governing body of any city, county, or city and county.

California Civil Code 1691
Procedure [for rescission]

Subject to [Section 1693](#), to effect a rescission a party to the contract must, promptly upon discovering the facts which entitle him to rescind if he is free from duress, menace, undue influence or disability and is aware of his right to rescind:

- (a) Give notice of rescission to the party as to whom he rescinds; and
- (b) Restore to the other party everything of value which he has received from him under the contract or offer to restore the same upon condition that the other party do likewise, unless the latter is unable or positively refuses to do so.

When notice of rescission has not otherwise been given or an offer to restore the benefits received under the contract has not otherwise been made, the service of a pleading in an action or proceeding that seeks relief based on rescission shall be deemed to be such notice or offer or both.

California Civil Code 3051
Other Liens

Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof, by labor or skill, employed for the protection, improvement, safekeeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service; a person who makes, alters, or repairs any article of personal property, at the request of the owner, or legal possessor of the property, has a lien on the same for his reasonable charges for the balance due for such work done and materials furnished, and may retain possession of the same until the charges are paid; and foundry proprietors and persons conducting a foundry business, have a lien, dependent on possession, upon all patterns in their hands belonging to a customer, for the balance due them from such customers for foundry work; and plastic fabricators and persons conducting a plastic fabricating business, have a lien, dependent on possession, upon all patterns and molds in their hands belonging to a customer, for the balance due them from such customer for plastic fabrication work; and laundry proprietors and persons conducting a laundry business, and drycleaning establishment proprietors and persons conducting a drycleaning establishment, have a general lien, dependent on possession, upon all personal property in their hands belonging to a customer, for the balance due them from such customer for laundry work, and for the balance due them from such customers for drycleaning work, but nothing in this section shall be construed to confer a lien

in favor of a wholesale drycleaner on materials received from a drycleaning establishment proprietor or a person conducting a drycleaning establishment; and veterinary proprietors and veterinary surgeons shall have a lien dependent on possession, for their compensation in caring for, boarding, feeding, and medical treatment of animals.

This section shall have no application to any vessel, as defined in Section 21 of the Harbors and Navigation Code, to any vehicle, as defined in Section 670 of the Vehicle Code, which is subject to registration pursuant to that code, to any manufactured home, as defined in Section 18007 of the Health and Safety Code, to any mobilehome, as defined in Section 18008 of the Health and Safety Code, or to any commercial coach, as defined in Section 18001.8 of the Health and Safety Code, whether or not the manufactured home, mobilehome, or commercial coach is subject to registration under the Health and Safety Code.