

**CA RESIDENTIAL “THREE (OR FIVE) DAY” AND “7-DAY”
NOTICES OF THE RIGHT TO CANCEL**

January 11, 2021

FOR RESIDENTIAL PROJECTS ONLY

INSTRUCTIONS FOR USE

(This form is not to be given to customers.)

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Before Going to the Printer: Read these instructions thoroughly and fill in your information on form, as explained below. Unlike the other forms, this must be printed in *triplicate* because the law requires the contractor to provide *two* signed copies to the customer. One is for the customer to retain in the event he or she chooses to cancel and the other is to provide to the contractor. The third should be kept in the contractor’s file.

Understanding California’s Right to Cancel

Rationale: 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 salesman appears at buyer’s home which pressures may arise regardless of whether buyer invited seller to call at the buyer’s residence.”

Do not give a Notice of the Right to Cancel to commercial customers. The right of cancellation only applies to residential projects and should not be discussed on commercial projects. The cancellation rules are complex. Contact a licensed attorney for consultation so as not to subject your contractor’s license to disciplinary action for violation of the rules.

Cancellation and Rescission: The legislation resulted in a series of complex rules 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.

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 package comply with California law. As explained below, 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 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.

Notice Must Be Given on Emergencies: The Notice of the Right to cancel must be given to the customer on all California residential projects, *including emergencies*. The only relevant exception is where the contract is executed at the contractor’s place of business.

Special Waiver Provision: Fortunately, however, California law allows the customer to waive the cooling off period in the event of an emergency if: (1) **the contract is initiated by the buyer** or his agent or insurance representative; and (2) the services are immediately necessary for the protection of persons or property; and (3) 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. As explained above, the customer can always terminate a service contract so the waiver of the cooling off period is not a true waiver of all cancellation rights. The waiver of the cooling off period primarily means that the contractor cannot be barred from payment for the first three days of work, or five days if the customer is age 65 or older.



Cancellation within three days is rare. If 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.

Contractor Waives Compensation?: 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.

Effect of Cancellation: Once the transaction is canceled, the contractor must return any payments made by the customer within 10 days. Narrow exceptions may apply. Consult with a lawyer to determine your rights on a case-by-case basis.

Selecting the Proper Form: Two Notice forms are provided with this package: a Three-Day Notice and a Seven-Day Notice. The duration of the cooling off period depends on the nature of the project. In most cases, the period lasts three business days.

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 days to cancel. However, if the work will address damage caused in a sudden catastrophic event for which the President or the Governor has declared a state of emergency, 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 Seven-Day Notice. Use the **"Three (or Five) Day Notice"** if no state of emergency has been declared.



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

Date of Transaction: Fill in the date the Service Agreement is executed—*not* the date the work will commence.

Contact Information: Replace the italicized text in the second paragraph with your contact information.

Cancellation deadline: Calculate the third "business day" after the "Date of Transaction" and write it in the second paragraph. "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.

"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.

Waiver of the Right to Cancel: See the explanation of the *Special Waiver Provision*, above. In the lower box, have the customer write an explanation of the facts that constitute an emergency situation that requires immediate attention. Do not type in the explanation of the emergency. The contractor can assist the customer with the choice of words, but the statement should be in the customer's (or agent's) handwriting. For example: "house is flooded and water must be extracted to avoid contamination and additional damage." Then fill in all the information where indicated in the Waiver box.

"I received two completed copies of this form." This section must 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 is the acknowledgement; fill in the date you provide the form and check the box for “customer” or “authorized agent.” Print the signor’s name and have him or her sign. Do not leave it up to the signor to check the “customer” or “authorized agent” box. For important information about the definition of “customer” and concept of agency, see the instructions that accompany the Service Agreement.

Execution: 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 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. The second and third pages are duplicate copies of the Notice of Cancellation. Those are for use only if the customer intends to cancel, which is not permitted if the customer has waive the right to cancel.

1. The customer fills in the facts in the waiver, as explained above, but only if the project involves emergency service;
2. The second part that begins with “Pursuant to Section 1689.13...” is only for the customer to fill out and only if the customer has waived the right to cancel and elects to the cancel the contract.
3. The bottom part that begins with “I received two copies” should be filled out with the date, and the contractor should check the “customer” or “agent” box depending on whether the person signing the form is the person responsible for the payment. Give the customer a copy of the signed form and two (2) copies of the attached Notice of Cancellation, which are the second and third pages of the WORD file.
4. Be sure to fill in the “Date of Transaction” on the second and third pages of the form, and your company’s name and address. Then, calculated the deadline to cancel and insert it after “not later than midnight.” Do not ask the customer to sign the Notice of Cancellation (unless you want the job cancelled).

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