

## NOTICE OF CANCELLATION NOC121719TX

### **INSTRUCTIONS FOR USE**

(These Instructions are not to be given to customers.)

*DISCLAIMER: This product is for general information purposes only and is not a substitute for the advice of an attorney. Non-lawyers should seek the advice of an attorney licensed in Texas in all legal matters, including verification of the fitness of this material for your particular purpose. Edward H. Cross is licensed to practice law only in the States of California and Hawai'i.*

**Introduction:** Texas gives some homeowners a special right of cancellation in Texas Constitution Section 50(A)(5)(C), which you can view by visiting this link: <http://bit.ly/2ELhoBt>, or in the Selected Texas Statutes provided with this package.

This Notice is not for use with commercial contracts.

The notice must be provided in the same language used in the principal sales presentation, e.g., Spanish.

Texas Business & Commerce Code section 601.051 states that in addition to any other rights or remedies available, a consumer may cancel a consumer transaction not later than midnight of the third business day after the date the consumer signs an agreement or offer to purchase.

This Notice of Cancellation form is to be provided to the consumer so that when and if he or she decides to cancel, the required form will be handy.

Business & Commerce Code section 601.053 is also included with the Selected Statutes as part of this package. It states, among other things, that a seller must provide **two “easily detachable” copies** of this fully completed Notice. The MS WORD version of this form is two pages long because it includes the required duplicate. The two pages are identical.

The customer does not sign the Notice unless and until she elects to cancel the transaction within three days of the date of the transaction. However, the customer should sign the bottom part of the form when the service agreement is signed if immediate repairs are needed to protect the health and safety of the owner or occupant.

Please note the Attorney General for the State of Texas published the following:

# The 3-Day Right to Cancel a Purchase

The 3-day right to cancel law applies to sales made at facilities other than the seller's place of business. Such locations may be the consumer's residence and places rented on a temporary or short-term basis, such as hotel rooms or convention centers.

A "home solicitation transaction" takes place whenever a consumer purchases goods or services for more than \$25 payable in cash or installments at a place other than the seller's place of business. The place other than the seller's place of business may be the consumer's home, but it may also be a place that the merchant has rented on a temporary basis, such as a hotel room or convention center.

Under Texas law, the door-to-door seller must advise you orally and in writing that you have a right to cancel the sale within three days. He or she must also give you a contract or receipt stating the date of the sale, the name and address of the merchant, and a statement of your right to cancel the contract which includes the address where you send your cancellation notice.

The contract or receipt and the notice of your right to cancel must be in the same language as that principally used in the sales presentation. For example, if the buyer and the salesperson spoke in Spanish during the sale, the contract must be in Spanish.

Contractors should also be aware of the following statement from the Texas Attorney General about the cancellation process:

## Canceling a Sale

If the salesperson provided you with the right forms, to cancel the sale you may simply sign the one titled "notice of cancellation," date it, and mail it back to the seller. To obtain a full refund, you must do this before midnight of the third business day after the sale. Keep a copy of the form.

If the salesperson did not provide a cancellation form, you may still cancel your contract. Because the seller violated the law by not providing the form, you have extra time. But remember, you must cancel in writing. Be sure to keep a copy of the contract and your letter notifying the seller of the cancellation. Of course, the sooner you do this, the better.

After you cancel, the seller has ten business days to refund your money, return any note you may have signed concerning the sale, and return any trade-in items. The seller of the goods must notify you within ten days whether he or she intends to retrieve the goods or abandon them. He or she may not require you to mail or ship the goods back.

If the seller fails to notify you of his or her intention to repossess the goods within twenty days after cancellation, you may not be forced to return the goods at a later date. You are not obligated to return goods to the seller until you have recovered either your money or your agreement to pay money. The seller must restore your property to its original condition if any "improvements" were made to it and you want it restored.

**Waivers:** Texas law prohibits many types of waivers, particularly in transactions with consumers. See Business & Commerce Code section 601.151 by clicking here: <https://law.justia.com/codes/texas/2015/business-and-commerce-code/title-12/chapter-601/>. Do not present a form to a customer with the term "waiver" on it without the

advice and consent of a licensed Texas attorney. However, the right of rescission may not apply in the case of emergencies, as explained below.

**No Rescission for Emergencies:** The right of rescission does not apply where immediate repairs are needed for the health and safety of the occupants but it is a good business practice to obtain the customer's written acknowledgment of the exigent circumstances. The space at the bottom of the form is provided for this purpose.

For other important information, visit the Texas Attorney General's Web site:  
<http://bit.ly/2ePThqr>.

NOTICE OF CONSUMER'S RIGHT TO CANCEL REQUIRED.

(a) A merchant must provide a consumer with a complete receipt or copy of a contract pertaining to the consumer transaction at the time of its execution.

(b) The document provided under Subsection (a) must:

(1) be in the same language as that principally used in the oral sales presentation;

(2) contain the date of the transaction;

(3) contain the name and address of the merchant; and

(4) contain a statement:

(A) in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used; and

(B) in boldfaced type of a minimum size of 10 points in substantially the following form:

"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."