

Home Improvement Contract Requirements for 2006

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I. Introduction

On January 1, 2006, certain changes that were made to the California Business & Professions Code and the California Civil Code came into effect that impacted the requirements for home improvement contracts. The law defines a “home improvement contract” as:

“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).”¹

The term “home improvement contract” also includes:

“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 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.”²

Thus, unless a contractor is performing work for less than \$500 or performing service and repair work, a contractor who is performing residential, home remodeling, or tenant improvement work will be required to use a home improvement contract. The changes in the

¹ Cal. Bus. & Prof. Code § 7159(b).

² Id.

law impose new requirements that must be contained in each such home improvement contract. This article will discuss the requirements for home improvement contracts for 2006. This article will first discuss the requirements of the actual contract document itself. The article will then discuss the required provisions that may be provided to the customer as an attachment to the contract document. All of the provisions discussed, however, must be included in the home improvement contract.

II. Provisions Required in the Home Improvement Contract Document

The following provisions are requirements for the home improvement contract document itself. In other words, the contract must include the following provisions in the body of the contract and not part of some other document.

A. Formatting and Typeface³

The contract must be written in a legible font no smaller than 10-point with headings in boldface type.⁴ The contract must contain the name, business address, and license number of the contractor.⁵ If applicable, the contract must include the name and the registration number of the home improvement sales person.⁶ The contract must include the heading “Home Improvement” in 10-point font.⁷ If there are other documents that are going to be made part of the contract, including the notices discussed below, plans, specifications, or other special terms and conditions, the contract must include the heading “List of Documents to be Incorporated into the Contract,” followed by the list of the documents that are to be incorporated into the contract.⁸

³ Unless otherwise noted in this article, where there is a reference to a font being in a required size, the font can be in a larger size. Only the minimum size font is noted.

⁴ Cal. Bus. & Prof. Code § 7159(c)(1) & (2).

⁵ Cal. Bus. & Prof. Code § 7159(d)(1).

⁶ Cal. Bus. & Prof. Code § 7159(d)(2).

⁷ Cal. Bus. & Prof. Code § 7159(d)(3).

⁸ Cal. Bus. & Prof. Code § 7159(d)(12).

The contract must be fully executed and returned to the customer prior to commencement of work, which execution and return commences the customer's right to cancel (discussed below).⁹ The contract must include the following statement in boldface 12-point font: "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."¹⁰ The first page of the contract must also include the date that the contract was executed by the customer, the name and address of the contractor, preceded by the statement advising the customer that such address is where the notice of cancellation can be sent.¹¹

B. Payment Provisions

In regards to payment from the customer to the contractor, the contract must include the heading "Contract Price" followed by the contract amount (labor, materials and profit) in dollars.¹² If a contractor is going to impose a finance charge, the contract must include the heading "Finance Charge" followed by the amount in dollars and cents.¹³ If there is a downpayment to be charged, the contract must include the heading "Down Payment," the downpayment amount, and the following statement in boldface 12-point boldface type: "THE DOWN PAYMENT MAY NOT EXCEED \$ 1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS."¹⁴ If there are going to be progress payments, the contract must include the heading "Schedule of Progress Payments," the amount of each progress payment in dollars and cents with specific reference to the work and/or services to be performed and/or equipment to be provided, and the following statement in 12-point boldface type: "The

⁹ Cal. Bus. & Prof. Code § 7159(c)(3)(A).

¹⁰ Cal. Bus. & Prof. Code § 7159(d)(4).

¹¹ Cal. Bus. & Prof. Code § 7159(c)(3)(b).

¹² Cal. Bus. & Prof. Code §§ 7159(d)(5) & 7159.5(a)(1).

¹³ Cal. Bus. & Prof. Code § 7159(d)(6).

¹⁴ Cal. Bus. & Prof. Code § 7159(d)(8).

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.”¹⁵ This is because, except for a downpayment, a contractor cannot request or payment that exceeds the value of the work performed or material delivered.¹⁶

As for mechanics’ lien releases, the contract must also include a statement that, upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the customer a full and unconditional mechanics’ lien release for the portion of the work for which payment has been made.¹⁷

C. Work Provisions

With respect to provisions about the work to be performed, the contract must include 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 must also include a plan and scale drawing showing the shape, size, dimensions, and the construction and equipment specifications.¹⁸ As for the timing of the work, the contract must include the heading “Approximate Start Date”, an approximate date upon which work will be commenced, and a statement that describes what constitutes substantial commencement of work

¹⁵ Cal. Bus. & Prof. Code § 7159(d)(9).

¹⁶ Cal. Bus. & Prof. Code § 7159.5(a)(5).

¹⁷ Cal. Bus. & Prof. Code § 7159(c)(4).

¹⁸ Cal. Bus. & Prof. Code § 7159(d)(7).

under the contract.¹⁹ The law also requires the heading “Approximate Completion Date” and the approximate date of completion.²⁰

The law provides that a change order will only become part of the contract if signed by the parties prior to commencement of the work.²¹ Accordingly, the contract must include 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 any work covered by the new change order. The order must describe the scope of the extra work or change, the cost to be added or subtracted from the contract, and the effect the order will have on the schedule of progress payments.”²²

D. Bonding Provisions

An exception to some of the requirements can be made if the contractor provides a bond or joint control approved by the Contractors’ State License Board (“CSLB”) registrar. The contract, however, must include a notice, in close proximity to the parties’ signatures, that the customer has the right to require the contractor to have a performance and payment bond.²³ 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: (a) the warning about downpayments not exceeding \$1,000 or 10 percent of the contract amount, whichever is less required by Business & Professions Code section 7159.5(a)(3) (discussed above); (b) the notice regarding progress payments in Business &

¹⁹ Cal. Bus. & Prof. Code § 7159(d)(10).

²⁰ Cal. Bus. & Prof. Code § 7159(d)(11).

²¹ Cal. Bus. & Prof. Code § 7159(c)(5).

²² Cal. Bus. & Prof. Code § 7159(d)(13).

²³ Cal. Bus. & Prof. Code § 7159(c)(6).

Professions Code section 7159.5(a)(4) (discussed above); (c) the warning regarding payment for only for work actually performed in Business & Professions Code section 7159.5(a)(5) (discussed above); and (d) the mechanics' lien warning in Business & Professions Code section 7159(e)(4) (discussed below).²⁴ In such a situation, the contractor may accept payment prior to completion.²⁵

III. Provisions Required That May Be Attached to the Home Improvement Contract

The following provisions are required, but may be attached as a separate document to the home improvement contract itself, provided certain other requirements are met.

A. Insurance Notices

A notice concerning commercial general liability insurance can be provided as an attachment only if the contract includes the following statement: “A notice concerning commercial general liability insurance is attached to this contract.”²⁶ Otherwise, the following information must be included in the contract itself. The notice must 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;” or (c) “(The name on the license or ‘This contractor’) is self-insured.”²⁷

A notice concerning workers’ compensation insurance can be provided as an attachment to the contract only if the contract includes the statement: “A notice concerning workers’

²⁴ Cal. Bus. & Prof. Code § 7159.5(a)(8).

²⁵ Id.

²⁶ Cal. Bus. & Prof. Code § 7159(e)(1).

²⁷ Cal. Bus. & Prof. Code §§ 7159(e)(1)(A), (B), & (C).

compensation insurance is attached to this contract.”²⁸ Otherwise, the following information must be included in the contract itself. 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;” or (b) “(The name on the license or ‘This contractor’) carries workers’ compensation insurance for all employees.”²⁹

B. Change Order Notice

The contract may include as an attachment the required notice that provides the customer the following statements about the performance of extra or change-order work: (a) the buyer may not require a contractor to perform extra or change-order work without providing written authorization prior to the commencement of any work covered by the new change order; (b) an extra work or a change order is not enforceable against a buyer unless the change order also identifies all of the following in writing prior to the commencement of any work covered by the new change order: (i) the scope of work encompassed by the order; (ii) the amount to be added or subtracted from the contract; and (iii) the effect the order will make in the progress payments or the completion date; and (c) the contractor’s failure to comply with the requirements of the foregoing does not preclude the recovery of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment.³⁰

C. Mechanics’ Lien Notice

²⁸ Cal. Bus. & Prof. Code § 7159(e)(2).

²⁹ Cal. Bus. & Prof. Code §§ 7159(e)(2)(A) & (B).

³⁰ Cal. Bus. & Prof. Code § 7159(e)(3).

The contract may include as an attachment the required notice with the heading:

“Mechanics’ Lien Warning” written as follows³¹:

MECHANICS LIEN WARNING:

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

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

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

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

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

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

PAY WITH JOINT CHECKS. One way to protect yourself is to pay with a joint check. When your contractor tells you it is time to

³¹ Cal. Bus. & Prof. Code § 7159(e)(4).

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

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

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

D. CSLB Notice

The contract may include as an attachment the required following notice about the CSLB in at least 12-point typeface³²:

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

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

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

For more information:

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

Call CSLB at 800-321-CSLB (2752)

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

E. Cancellation Notices

The type of cancellation notice that is required depends on the circumstances under which the contract was signed.

1. The Three-Day Right to Cancel

³² Cal. Bus. & Prof. Code § 7159(e)(5).

Unless the contract is (a) negotiated at the contractor's place of business, (b) subject to the "Seven-Day Right to Cancel" (discussed below), or (c) the contractor is subject to licensure under the Alarm Company Act, the contract must include a notice entitled "Three-Day Right to Cancel."³³ The notice may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: "The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a 'Notice of the Three-Day Right to Cancel.'"³⁴ The notice must be in at least 12-point boldface type, in immediate proximity to a space reserved for the customer's signature, and be written in the same language, e.g., Spanish, as that principally used in any oral sales presentation.³⁵ The customer must acknowledge receipt of the notice by signing and dating the notice form in the signature space.³⁶

The notice itself must contain the following text³⁷:

Notice of 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

³³ Cal. Bus. & Prof. Code § 7159(e)(6)(A).

³⁴ Cal. Bus. & Prof. Code § 7159(e)(6)(C)(v).

³⁵ Cal. Bus. & Prof. Code § 7159(e)(6)(C)(i), (ii) & (iv).

³⁶ Cal. Bus. & Prof. Code § 7159(e)(6)(C)(iii).

³⁷ Cal. Bus. & Prof. Code § 7159(e)(6)(B).

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.

The notice must also be accompanied by a completed form in duplicate, captioned “Notice of Cancellation,” attached and easily detachable from the contract, and written in the same language, e.g., Spanish, as used in the contract, written as follows³⁸:

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

³⁸ Cal. Bus. & Prof. Code § 7159(e)(6)(C)(vi).

/address of seller's place of business/

not later than midnight of

(Date)

I hereby cancel this transaction. ---
(Date)

(Buyer's signature)

2. The Seven-Day Right to Cancel

If the contract that is 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, the contract must include a notice entitled "Seven-Day Right to Cancel."³⁹ 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.'"⁴⁰ The notice must be in at least 12-point boldface type, in immediate proximity to a space reserved for the customer's signature, and be written in the same language, e.g., Spanish, as that principally used in any oral sales presentation.⁴¹ The customer must acknowledge receipt of the notice by signing and dating the notice form in the signature space.⁴²

³⁹ Cal. Bus. & Prof. Code § 7159(e)(7)(A).

⁴⁰ Cal. Bus. & Prof. Code § 7159(e)(7)(B)(v).

⁴¹ Cal. Bus. & Prof. Code § 7159(e)(7)(B)(i), (ii) & (iv).

⁴² Cal. Bus. & Prof. Code § 7159(e)(7)(B)(iii).

The notice itself must contain the following text⁴³:

Notice of 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.

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 contract⁴⁴:

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.

⁴³ Cal. Bus. & Prof. Code § 7159(e)(7)(A).

⁴⁴ Cal. Bus. & Prof. Code § 7159(e)(7)(B)(vi).

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)

IV. Conclusion

As one can see, the recent changes in the law have imposed rather complex and detailed requirements for home improvement contracts. Based on potentially ambiguous provisions in these new statutes, it is entirely possible that the legislature will enact a new provision in 2007

that alters these requirements. Whether a particular contract meets with these new requirements entails a detailed review of the existing terms and provisions and a comparison with the existing version of Business & Professions Code sections 7159 and 7159.5. If a contractor is unsure of whether their contract meets with the new requirements, they should contact an attorney who is familiar with construction law. Green & Campbell, LLP specializes in construction law and has experienced attorneys on staff that can assist contractors of all sizes with determining whether a particular contract meets the new Home Improvement Contract requirements and drafting contracts that meet the requirements.

If you have any questions or comments regarding this article, please do not hesitate to contact Scott Green at Green & Campbell, LLP.

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Please note that this article is only intended to provide some general educational information regarding the requirements of home improvement contracts in California for 2006. Deciding whether or not your or your company's contract meets the new requirements is a decision you should make only after reviewing the current laws, facts, and circumstances of your situation with an experienced construction law attorney.