

## **NOTICE OF THREE-DAY RIGHT TO CANCEL – REALLY NECESSARY?**

**February 2016**

Is it necessary to have a notice of the three-day right to cancel in your home improvement contract? (And that goes for you too, subcontractors, if you are in direct contact with a home owner.)

The question – asked by a client last month - is a fair one; indeed a good one. This same question came up a number of years ago with another contractor client. At that time, I reviewed the California Business and Professions Codes Sections on point, and actually contacted a representative of the CSLB.

The contractor read the relevant statute as requiring the three-day notice in the contract because some form of home solicitation was included.

The contractor's/subcontractor's concern, of course, is that some damn client will actually use the provision and cancel a job that had been started. (The good news: in my 36 years of practice, I have never seen this right to cancel used by a homeowner.)

The response from the CSLB then and presumably now (and supported by the law); it was not an issue of whether the contractor is a “home solicitor”- using sales people. Rather, it was that a three-day right to cancel should be included because of the **place** of negotiation of the home improvement contract. It would seem the CSLB's concern is unfair sales practices by outside salesmen in a homeowner's residence. So, unless negotiation and execution of the contract is entirely at the contractor's office, the notice should be included.

The CSLB's position is based on the reality that most home improvement contracts are “negotiated” over a period of time in a number of places. Very frequently (almost always), the contractor and/or his representative will at some point meet with the clients at their home and discuss terms and scope.

**The CSLB's “Terms of Agreement”.** Just to be sure, I also looked at the CSLB pamphlet for contractors called “Contracting for Success: A Contractor's Guide to Home Improvement Contracts”. The notice of the three-day right to cancel is included there as a necessary term. It is also in the CSLB's “Terms of Agreement”, a pamphlet for homeowners. (By the way, these pamphlets are pretty handy sources of information; they can be found on the CSLB website.)

**Designers.** The same rationale behind the notice applies to other design professionals. In particular, Certified Interior Designers are required to include the three-day right to cancel notice. While we are not aware of any statutory requirement for non-Certified Interior Designers to include this provision, it may not be a bad idea, if you

wish to be cautious.

**Conclusion.** The CSLB clearly deems the three-day notice necessary. I thus think the three-day right to cancel provision stays in; better safe than sorry. The potential risk of failing to include it when required is that the homeowner may be entitled to cancel the contract at any time. In any complaint/dispute before the CSLB, the first document it looks at is the contract – and it is the contractor’s obligation to see that the contract complies with all notice requirements.

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