

Who May Solicit, Sell, Negotiate, and Sign Home Improvement Contracts?

This is an odd topic. I think most contractors' response to this question would be: "Huh? Well, anyone in the company." They would be wrong, and possibly unknowingly exposing themselves to future liability.

If you do not comply with the California Business and Professions Code's laws regarding Home Improvement Salespersons (HIS), there may be serious consequences - including but not limited to disciplinary action, criminal action, and possibly unenforceability of the contract. Fortunately, it is relatively easy to register a Home Improvement Salesperson with the CSLB, and there are some exemptions from registration.

A Home Improvement Salesperson is a person employed by a licensed home improvement contractor: to 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. These are the persons who need to be registered.

Important Exemption For Official Personnel. The official personnel listed on the contractor license with the CSLB are exempted from registering as a Home Improvement Salesperson. But, the person must be listed in CSLB records as: (1) an

officer of record of a corporation or a manager of record of an LLC; (2) a **general partner**; or (3) as a **qualifying individual** as defined in Business and Professions Code Section 7025.

Exemption Based on Location: WHERE does the Salesperson conduct business? Salespersons who only sell goods or negotiate contracts at a fixed business establishment, where goods or services are exhibited or offered for sale are not considered Home Improvement Salespersons. Thus, if your salespersons only sell goods or negotiate contracts at a showroom open to the public they are not considered a Home Improvement Salesperson and do not need to register.

On the other hand, anyone who solicits, sells, negotiates, or executes home improvement contracts for a licensed contractor outside of the normal place of business must be registered.

Examples. Many companies – even small ones - have estimators who get heavily involved in the negotiation process of a project that they will run. Project managers are also a group who sometimes get involved in activities that require registration.

Other Exemptions. There is an exemption for those who contact prospective buyers for the exclusive purpose of scheduling appointments for a registered Home Improvement Salesperson. Bona Fide service or repair people who

are employed by a licensed contractor and whose repair or service calls are limited to the service or repair initially requested by the buyer are also exempt from the registration requirements.

Risks of Using an Unregistered Salesperson. The Business and Professions Code states that a contractor who employs an unregistered person to negotiate contracts is subject to disciplinary action. Furthermore, it is a misdemeanor for the individual to act as a home improvement salesperson without being registered.

The law does not specifically state that the underlying contract would be unenforceable. However, a smart owner/attorney may claim other violations such as unfair business practices, fraud, inducement, etc., which may have an effect on the enforceability of the contract.

The Good News: Registering as a Home Improvement Salesperson is Relatively Easy. The only qualification to register as a Home Improvement Salesperson is to be at least 18 years of age. There are no educational, residency, or experience requirements.

You can obtain the “Application for Registration as a Home Improvement Salesperson” from any CLSB office, by calling the CSLB or by downloading the

application from www.cslb.ca.gov. HIS registration must be renewed every two years.

Conclusion/Moral. It is unusual for this to become an issue. But we have seen it recently. Thus, you should ascertain which employee or agent solicits, sells, negotiates, or executes home improvement contracts and who is not exempt – and register that person. It is better to be safe in this circumstance.

If you have any question about whether to register someone or not, contact your counsel.

Statutes

B & P Section 7152;
B& P Section 7153; and
B & P Section 7154.
Generally see B & P Sections 7150 through 7173.

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