



Legal Guide K-6

**CONSUMER TRANSACTIONS WITH STATUTORY
CONTRACT CANCELLATION RIGHTS**

January 2010

**I
SPECIFIC STATUTORY
CANCELLATION RIGHTS**

A number of laws give consumers a legal right to cancel contracts in specific transactions within a short time after the consumer signs the contract, and without giving the seller or other party a reason or having to show “legal cause.” This Legal Guide includes a list of these transactions and the periods allowed for canceling them. Note that some cancellation periods are measured in *business* days.

A consumer-buyer can cancel these kinds of contracts for any reason (or for no reason) and need not explain. Typically, there is no penalty for canceling under these statutes. In order to cancel, the buyer need only send the seller written notice of cancellation within the period allowed by statute. (Most cancellation periods begin when the consumer receives written notification of his or her right to cancel.)

In order to cancel, the buyer must sign and date the cancellation notice, which must state that the buyer is canceling the contract. The buyer should send the notice to the seller by certified mail, return receipt requested, at the address that the seller has given in the sale documents. The buyer should keep a copy of the notice for his or her own records, and to be able to prove that the notice was given and what was said.

Generally, the buyer's notice of cancellation is effective when it is deposited in the mail with the proper address and postage. The buyer should note the exact date, time and place of mailing on the buyer's own copy.

Other cancellation rights may also be present, depending on the circumstances. See parts II and III below.

- A Automobile Sales and Leases** -- There is *no statutory cancellation period* for automobile sales or leases.
- C Credit Repair Services** -- five day cancellation period (Civ. Code § 1789.16).
- D Dance Studio Services** -- indefinite cancellation period (Civ. Code § 1812.54(b)).
- Dating Services** -- three business day cancellation period (Civ. Code § 1694.1).

- Dental Services Contracts** -- three business day cancellation period (Civ. Code § 1689.3).
- Discount Buying Services** -- three day cancellation period (Civ. Code § 1812.118).
- Door-to-Door Sales** -- three business day cancellation period (Civ. Code § 1689.6(a)).
- E Electric Service Contract** -- three business day cancellation period (PUC 395).
- Employment Counseling Services** -- three business day cancellation period (Civ. Code § 1812.511(a)(6)).
- Endless Chain Scheme** -- indefinite cancellation period when scheme is unlawful under Pen. Code § 327 (Civ. Code § 1689.2).
- F Funeral Contracts** (pre-need) -- indefinite cancellation period (B&P 7737).
- H Health Studio Services** -- five business day cancellation period (Civ. Code § 1812.85(b)).
- Home Equity Sale During Foreclosure** -- five business day cancellation period (Civ. Code § 1695.4(a)).
- Home Improvements Contracts** -- three business day cancellation period if a security interest results or may result (12 CFR 226.23)
- Home Loans** -- three business day cancellation period (12 CFR 226.23).
- Home Repair or Restoration Contracts Following a Disaster** -- seven business day cancellation period (unless contract is automatically void) (Civ. Code § 1689.6(c)).
- Home-Secured Transactions** -- three business day cancellation period (12 CFR 226.23).
- Home Solicitation Sales** -- three business day cancellation period (Civ. Code § 1689.6).
- I Immigration Consultant Services** -- three day cancellation period (B&P 22442(f)).
- Insurance** (life under-\$10,000) -- between 10- and 30-day cancellation period as determined by insurer (Ins. Code § 10127.7).
- Insurance** (disability, seniors, life) -- 30-day cancellation period (Ins. Code 786).
- Insurance** (property) -- indefinite cancellation period (Ins. Code § 6010(a)).
- Internet Sales** (when order has not been filled) -- 30 day cancellation period (B&P 17538(a)).
- J Job Listing Services** -- three business day cancellation period (Civ. Code § 1812.516(a)(6)).
- L Legal Document Assistant** -- 24 hour cancellation period (B&P 6410(e)).

M Mail/Telephone Sales (when order has not been filled) -- 30 day cancellation period (B&P 17538(a), 16 CFR Part 435).

Membership Camping Contracts

- If buyer visits site -- three business day cancellation period (Civ. Code § 1812.303(a)).
- If buyer does not visit site -- 10 business day cancellation period (Civ. Code § 1812.304(a)).

Mortgage Foreclosure Consultant Services -- three business day cancellation period (Civ. Code § 2945.3(e)).

P Personal Emergency Response Unit -- seven business day cancellation period (Civ. Code § 1689.6(b)).

Private Child Support Collectors -- 15 business day cancellation period (Fam. Code § 5613(a)).

R Real Estate Transfer -- delayed or materially amended Transfer Disclosure Statement -- three day (statement delivered personally) or five day (statement delivered by mail) cancellation period (Civ. Code § 1102.3(b)).

S Seller Assisted Marketing Plans -- three business day cancellation period (Civ. Code § 1812.209(b)).

Seminar Sales -- three business day cancellation period (Civ. Code § 1689.20).

Service Contracts

- For used cars, home appliances, and home electronic products -- 30 day cancellation period (Civ. Code § 1794.41(a)(4)(A)).
- For new motor vehicles -- 60 day cancellation period (Civ. Code § 1794.41(a)(4)(A)).
- For any type of goods, pro-rata refund less cancellation fee -- indefinite cancellation period (Civ. Code § 1794.41(a)(4)(B)).

T Telephone Sales (when order has not been filled) -- 30 day cancellation period (B&P 17538(a), 16 CFR Part 435).

U Unlawful Detainer Assistants -- 24 hour cancellation period (B&P 6410(e)).

W Water Treatment Devices -- three business day cancellation period (B&P 17577.3).

Weight-loss Services -- three business day cancellation period (Civ. Code § 1694.6(a)).

The consumer may also have other cancellation rights. Almost any consumer contract entered into in a consumer's home (or somewhere other than the seller's place of business) can be canceled by sending a written notice of cancellation to the seller by midnight of the third business day after the consumer signed the contract. In order for this rule to apply, the contract must be for consumer goods costing \$25 or more. (Civ. Code §§ 1689-1689.12.)

A general discussion of other cancellation rights, which are generally applicable to all kinds of sales and contracts, follows.

II GENERAL CONTRACT CANCELLATION RIGHTS

A buyer may have a legal right cancel a contract if his or her consent to it was obtained by the seller's fraud or other material misrepresentation, or if the bargain fails in some important way through no fault of the buyer. The buyer should contact an attorney or other expert if the buyer thinks that he or she may have one of these grounds for canceling a contract.

A. Rescission for Fraud, Mistake, Undue Influence, Breach, Illegality

- (1) No real consent. If the buyer's consent to a contract was induced by the seller's fraud, or was given by mistake, or under duress, menace or undue influence, the buyer can rescind the contract (Civ. Code § 1689(b)).
- (2) Failure of anticipated exchange through fault. A buyer has a right to rescind a contract when the exchange which the buyer anticipated receiving from the seller "fails, in whole or in part, through the fault" of the seller (Civ. Code § 1689(b)(2)).
- (3) Promised exchange void for any reason. The buyer has a right to rescind a contract when the exchange which the seller promised to the buyer "becomes entirely void from any cause" (Civ. Code § 1689(b)(3)).
- (4) Failure of bargained exchange before being rendered. The buyer has a right to rescind a contract when the exchange which the buyer bargained to receive from the seller "fails in a material respect from any cause" before it is rendered to the buyer (Civ. Code § 1689(b)(4)).
- (5) Contract unlawful. The buyer has a right to rescind a contract when the contract "is unlawful for causes which do not appear in its terms or conditions, and the parties are not equally at fault" (Civ. Code § 1689(b)(5)).
- (6) Public interest prejudiced. The buyer has a right to rescind a contract if "the public interest will be prejudiced by permitting the contract to stand" (Civ. Code § 1689(b)(6)).
- (7) Procedure for rescinding. A procedure for exercising the right to rescind (which includes a notice of rescission to the other party) is established by law; in general, notice must be given within a reasonable time after the buyer learns of his or her right to

rescind (Civ. Code § 1691-1693).

(8) Other rescission rights. The procedures on rescission at Civ. Code § 1689-1693 also apply when the right to rescind is conferred by some other statute (Civ. Code § 1689(b)(7)).

B. Fraudulently Executed Contract Void.

If a party's consent to a purported contract is altogether absent because it was obtained through fraud -- for example, if the consumer was not aware that the document was a contract -- the purported contract is altogether void. (See *Jones v. Adams Financial Services* (1999) 71 Cal.App.4th 831, 839 [84 Cal.Rptr.2d 151, 157].)

C. Unconscionable Contract Unenforceable.

(1) Court's power to refuse to enforce. A court has the power to refuse to enforce a contract or a clause in a contract that is unconscionable when made (Civ. Code § 1670.5(a))

(2) Evidence of context admissible. To enable the court to decide whether a contract or clause is unconscionable, the parties may present evidence of the setting, purpose and effect of the contract (Civ. Code § 1670.5(b)).

D. Cancellation for Breach of Warranty

(1) Rejection. A buyer may reject (refuse to accept) a product that does not conform to the contract and the seller's warranties; if the seller does not cure the breach of warranty, the buyer may cancel the purchase (Com. Code 2601, 2711(1)).

(2) Revocation of Acceptance. Buyer may revoke his or her acceptance of a product if it substantially fails to conform to the contract and the seller's warranties, and may cancel the purchase (Com. Code 2608, 2711(1)).

(3) Lemon Law. If a warranted consumer product cannot be repaired after a reasonable number of repair attempts, the warrantor must either replace the defective product or reimburse its price, less the amount attributable to use (Civ. Code § 1793.2(d), 1793.22(b)).

Guide to Abbreviations:

Civ. Code § = Civil Code
B&P = Business and Professions Code
Ed. Code = Educational Code
CFR = Code of Federal Regulations
Com. Code = Commercial Code
Pen. Code § = Penal Code
PUC = Penal Code

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