

RESOLUTION 2-04-2002

DIGEST

Home Solicitation Contracts: Exemption for Architects and Engineers

Amends Civil Code section 1689.5 to exempt licensed architects and engineers from the provisions of the home solicitation contracts law.

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

Reasons:

This resolution amends Civil Code section 1689.5 to exempt licensed architects and engineers from the provisions of the home solicitation contracts law. This resolution should be disapproved because it is inconsistent with the intent of the home solicitation statutes.

In general, contracts for goods and services that are made in the home of the customer are "home solicitation" contracts. (Civ. Code, § 1689.5.) With certain enumerated exceptions, any home solicitation contract may be rescinded by the customer within three business days of executing a contract that notifies the customer of his or her right to do so. (*Id.*, §§ 1689.6, subd. (a), & 1689.7.) The purpose of the home-solicitation contract law is to protect consumers against both the pressures that typically can arise when a salesman suddenly appears at a buyer's home and the equally serious pressure that arises from the fact that the seller may be an intimidating presence once inside the buyer's home. (*Weatherall Aluminum Products v Scott* (1977) 71 Cal.App.3d 245, 248.)

The resolution would add architects and engineers to the list of professions that are statutorily exempted from that law, but has not offered convincing justification for doing so. Like other providers of goods or services, architects and engineers standing in a person's home pressuring them to sign a remodeling contract could exert undue influence. If the risk of rescission is too great, architects and engineers can simply enter into their contracts in their own place of business. Alternatively, they may limit their risk to three days by giving the requisite notice of the consumer's right to rescind, either in their contracts or in a separate notice. The benefit of protecting consumers, especially in emergency situations such as might be occasioned by earthquakes or other natural disasters, outweighs the minimal burden to these professionals.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Civil Code section 1689.5 to read as follows:

- 1 §1689.5
- 2 As used in Sections 1689.6 to 1689.11, inclusive, and in Section 1689.14:
- 3 (a) "Home solicitation contract or offer" means any contract, whether single or
- 4 multiple, or any offer which is subject to approval, for the sale, lease, or rental of goods or
- 5 services or both, made at other than appropriate trade premises in an amount of twenty-five
- 6 dollars (\$25) or more, including any interest or service charges. "Home solicitation
- 7 contract" does not include any contract under which the buyer has the right to rescind
- 8 pursuant to Title 1, Chapter 2, Section 125 of the Federal Consumer Credit Protection Act

9 (P.L. 90-321) and the regulations promulgated pursuant thereto, or any contract for repair
10 services with a contractor who is duly licensed pursuant to Chapter 9 (commencing with
11 Section 7000) of Division 3 of the Business and Professions Code, if (1) the contract price is
12 less than one hundred dollars (\$100), (2) the negotiation between the parties was initiated by
13 the prospective buyer, and (3) the contract contains a written and dated statement signed by
14 the prospective buyer stating that the negotiation between the parties was initiated by the
15 prospective buyer.

16 (b) "Appropriate trade premises," means premises where either the owner or seller
17 normally carries on a business, or where goods are normally offered or exposed for sale in
18 the course of a business carried on at those premises.

19 (c) "Goods" means tangible chattels bought for use primarily for personal, family, or
20 household purposes, including certificates or coupons exchangeable for these goods, and
21 including goods that, at the time of the sale or subsequently, are to be so affixed to real
22 property as to become a part of the real property whether or not severable therefrom, but
23 does not include any vehicle required to be registered under the Vehicle Code, nor any
24 goods sold with this vehicle if sold under a contract governed by Section 2982, and does not
25 include any mobilehome, as defined in Section 18008 of the Health and Safety Code, nor
26 any goods sold with this mobilehome if either are sold under a contract subject to Section
27 18036.5 of the Health and Safety Code.

28 (d) "Services" means work, labor and services, including, but not limited to, services
29 furnished in connection with the repair, restoration, alteration, or improvement of residential
30 premises, or services furnished in connection with the sale or repair of goods as defined in
31 Section 1802.1, and courses of instruction, regardless of the purpose for which they are
32 taken, but does not include the services of architects, engineers, attorneys, real estate
33 brokers and salesmen, securities dealers or investment counselors, physicians, optometrists,
34 or dentists, nor financial services offered by banks, savings institutions, credit unions,
35 industrial loan companies, personal property brokers, consumer finance lenders, or
36 commercial finance lenders, organized pursuant to state or federal law, that are not
37 connected with the sale of goods or services, as defined herein, nor the sale of insurance that
38 is not connected with the sale of goods or services as defined herein, nor services in
39 connection with the sale or installation of mobilehomes or of goods sold with a mobilehome
40 if either are sold or installed under a contract subject to Section 18036.5 of the Health and
41 Safety Code, nor services for which the tariffs, rates, charges, costs, or expenses, including
42 in each instance the time sale price, is required by law to be filed with and approved by the
43 federal government or any official, department, division, commission, or agency of the
44 United States or of the state.

45 (e) "Business day" means any calendar day except Sunday, or the following business
46 holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day,
47 Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: BAR ASSOCIATION OF SAN FRANCISCO

STATEMENT OF REASONS

Existing Law: The law requires contracts coming within the definition of a "Home solicitation contract" to meet certain formatting requirements and to contain a notice of the buyer's right to

cancel the contract within certain time periods. If the contract or offer does not contain a notice of the buyer's right to cancel, the cancellation period does not commence to run until notice meeting the statutory requirements is given to the buyer. The principal defining characteristic of a "home solicitation contract" is that the contract is made at other than "appropriate trade premises". The law presently exempts attorneys, real estate brokers and salesmen, securities dealers, physicians, and other regulated professionals and entities. Architects and engineers although required to be licensed by the state are not exempt.

This Resolution: Exempts licensed architects and engineers from the provisions of the home solicitation contracts law.

The Problem: A contract for architectural services signed at the architect's office is not a home solicitation contract. The same contract signed at the client's property is, technically, within the definition of a home solicitation contract. Architects usually use forms of agreement which have been developed over the years by the American Institute of Architects. These form agreements do not contain the statutory notice of the client's right to cancel. If the last signature is placed on the agreement at the client's residence, the client can wait until the architect or engineer has performed significant design work and then assert a right to cancel under the home solicitation contract provisions.

The thrust of the statutory scheme is to protect homeowners from high pressure techniques of door to door salesmen. (See *Beley v. Municipal Court* (1979) 100 Cal.App.3d 5, 7-8; *Weatherall Aluminum Products Co. v. Scott* (1977) 71 Cal.App.3d 245, 248.) The services of licensed design professionals is virtually never solicited door to door under pressure situations. An architect or engineer providing services in connection with a residential project has to visit the client's property to take measurements and observe existing conditions. It may well be a matter of convenience and courtesy to present the client with a contract for professional services at the client's residence rather than making the client come to the architect's office. Creating a cancellation right when the client signs the contract at home, but not if the client signs it at the architect's office is absurd. Exempting licensed professional engineers and architects from the cancellation notice provisions of the home solicitation contract law will simply take away a legalistic tool employed by cheapskates to shake down an overly trusting professional.

IMPACT STATEMENT

The proposed resolution does not affect any other statute, rule or regulation.

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