

## **Required and Recommended Legal Provisions for Home Improvements and Other California Private Construction Contracts**

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California law provides strict Consumer Protection requirements for “Home Improvement Contracts”, or prime contracts by a contractor with a residential property owner or tenant for remodeling or improvement work on their residence or dwelling units. Bus. Prof. Code §§ 7151, 7151.2, 7159(b).

The law defines “Home Improvement Contract”:

“Home Improvement” means the repairing, remodeling, altering, converting, or modernizing of or adding to, residential property, and shall include, but not be limited to, the construction, erection, replacement, or improvement of driveways, swimming pools, including spas and hot tubs, terraces, patios, awnings, storm windows, landscaping, fences, porches, garages, fallout shelters, basements, and other improvements of the structures or land which is adjacent to a dwelling house. “Home Improvement” shall also mean the installation of home improvement goods or the furnishing of home improvement services.”

Bus. & Prof. Code § 7151. See also Bus. & Prof. Code § 7159(b).

Bus. & Prof. Code § 7159(c) et seq, sets forth most of these special requirements, including requirements that there be a signed, written contract for a fixed price only, include firm start and completion dates, include a description of the work and major materials to be used, set forth a payment schedule, a notice regarding the contractor’s liability insurance, and mechanics liens rights, plus a notice of the homeowners’ “Three Day Right to Cancel” the contract, to the extent required by Bus. & Prof. Code § 7159(e)(6)(A) and Civil Code § 1589.8, etc. (See related legal article).

Also, in some circumstances set forth in Bus. & Prof. Code §§ 7159 & 7159.5, the contract must include a right for the property owner to cancel the contract in a limited time period, including but not limited to section 7159(e)(6)(A) and Civil Code § 1689.8 regarding the homeowner’s right to cancel the contract.

On any substantial project, it is advisable to have the construction contract be first reviewed with an experienced Construction Lawyer before signing, as the legal issues and contract language can be quite tricky, lengthy and complex for even sophisticated owners or non-specialized attorneys to deal with on their own!

The contract must also be properly licensed for the specific type of work it is performing.

Because changes and extra work are a frequent cause of claims, excessive costs and litigation on construction projects of all types, it is best if to define exactly in writing what the contractor is

going to do before signing a construction contract, and make sure that the scope of work is exactly described in the construction contract.

On larger or even mid-sized projects it is best to have an architect or an experienced building designer (for two story or less wood-framed homes) to define the exact product and all finishes and materials to be used, dimensions, etc in detailed “Construction Drawings”, which are typically more detailed than the plans needed to get a building permit.

Scale drawings are required for swimming pool contract.

If a need for changes or extra work does come up due to unforeseen conditions or for other reasons, change requests for Home Improvements must be in a writing which describes the changes and extra work in good detail, and a price and a signed change order before any changes are built out by contractor.

All extra Home Improvement work requires a fixed price written change order being signed in advance, pursuant to Bus. & Prof. Code § 7159(d)(13) and Bus. & Prof. Code § 7159.6.

But failure to have a written Change Order signed by all parties does not prevent the contractor from changing a reasonable amount for the extra work, but will usually help reduce disputes and delays in the work.

Under Bus. & Prof. Code § 7115 the contract must also describe in writing the contractor’s general liability insurance status. Usually the contractor should, by contract, be required to add the property owner as an “Additional Insured” on a contractor’s General Liability Insurance policy, and to receive a Certificate of Insurance reflecting this coverage.

Contractors who use workers who themselves do not have their own contractor’s license for the work they are doing must also carry Workers Compensation Insurance to protect those employees.

Failure to carry such Workers Compensation Insurance for such employees when required may prevent the contractor from getting a building permit in its own name, may create liability risks for property owners, and could result in the automatic suspension of a contractor’s license!

If the property owners will not be living in the property while the construction work is being performed, it is advisable that the property owner’s homeowners insurance carrier be notified of this fact in writing, and that “Builders Risk” or other coverage be obtained to protect the property and its replacement against fire, vandalism, etc., as often ordinary homeowners insurance may not cover such losses.

There are also additional requirements and prudent precautions that should be followed. See, [http://www.cslb.ca.gov/Consumers/Hire\\_A\\_Contractor/Contracts\\_And\\_Binding\\_Agreement](http://www.cslb.ca.gov/Consumers/Hire_A_Contractor/Contracts_And_Binding_Agreement)

Failure of a contractor to comply with these statutory or regulatory requirements may possibly, depending on the relative sophistication of the parties and the facts, either invalidate the contract and/or subject the contractor to license suspension or revocation by the Contractors State License Board, [www.cslb.ca.gov](http://www.cslb.ca.gov)

Violations of these Home Improvement requirements are the grounds most frequently used by the Contractors State License Board to fine or penalize contractors and subcontractors, and are also the most frequently used grounds for the suspension or revocation of contractors licenses.

Many of these same or similar requirements, and others, are also recommended for other prime construction contracts, some of which also have their own additional statutory requirements.

This discussion generally outlines most, but not all, of those required or recommended prime contract provisions.

**COMPARISON OF REQUIRED AND RECOMMENDED  
PRIVATE PRIME CONTRACT PROVISIONS**

#	Contract Provision	“Home Improvement” Contracts	Other Types of Prime Construction Contracts
1	Building Permit	All work to construct, erect, install, enlarge, repair, alter, move or replace requires a building permit.  Calif. Building Code § 105, and local building ordinances Violation is a misdemeanor , and subjects builder to license disciplinary action	All work to construct, erect, install, enlarge, repair, alter, move or replace requires a building permit.  Calif. Building Code § 105, and local building ordinances Violation is a misdemeanor , and subjects builder to license disciplinary action
2	Contractor’s License.	Required for all of a “contractor’s” bids, contracts and projects. Bus. & Prof. Code §§ 7026, 7028, 7031, 7055-7059(d)(1); 16 C.C.R §§ 832 et seq.	Required for all of a “contractor’s” bids, contracts and projects. Bus. & Prof. Code §§ 7026, 7028, 7031, 7055-7059; 16 C.C.R §§ 832 et seq.

3	License notice and disclosures.	<b>Notice not otherwise required.</b>	Required. Bus. & Prof. Code §§ 7030-7030.5.
4	Asbestos Work, Removal.	Special license and certification required. Bus. & Prof. Code §§ 7058.5, 7058.6; 16 C.C.R. §§ 833, 832.22.	Special license and certification required. Bus. & Prof. Code §§ 7058.5, 7058.6; 16 C.C.R. §§ 833, 832.22.
5	Hazardous substance remediation.	Certifications required. Bus. & Prof. Code § 7058.7.	Certifications required. Bus. & Prof. Code § 7058.7
6	Registered salesperson and disclosure, if not a company officer.	Required. Bus. & Prof. Code §§ 7152-7157.	Not. Required.
7	Notice of Owner's Right to Cancel.	Required. Bus. & Prof. Code § 7159(c)(3); Civil Code §§ 1689.5-1693.	Required for work on residential premises, unless contract negotiated in contractors office. Civil Code § 1689.5-1693. Not otherwise required.
8	Written Contract.	Required. Bus. & Prof. Code § 7159 (c)&(d)	Required for new house and swimming pool construction. Bus. & Prof. Code § 7164, 7167. Not otherwise required, but advisable.

9	Fixed Price Contract.	May be required. Bus. & Prof. Code § 7159(d)(5)(a).	Maybe required for Swimming Pool Contracts . Bus & Prof. Code § 7167(a)  Not otherwise required. Contract may also be cost-plus fee, etc.
10	Description of work, plans, materials.	Required . Bus. & Prof. Code §§ 7159(d)(7), 7162.	Required for some materials. Bus. & Prof. Code § 7162.  Required for Swimming Pool Contract Bus. & Prof. Code § 7167(a)  Not otherwise required, but advisable.
11	Written Change Orders in Advance of Work.	Required. Bus. & Prof. Code §§ 7159(d)(13), (e)(3), 7159.6.	Not otherwise required, but advisable. Civil Code § 1698.
12	Start and Completion Dates/Periods.	Required. Bus. & Prof. Code § 7159(d)(10).	Required for New House and Swimming Pool construction. Bus. & Prof. Code § 7164, 7167.  Not otherwise required, but advisable.
13	Finance Charge Disclosure	Required. Bus. & Prof. Code § 7159.5	Not Required.
14	Limited Deposit Payment.	Limited. Bus. & Prof Code § 7159(d)(8).	Not otherwise limited.  Limited for Swimming Pool Contract. Bus. & Prof. Code § 7167(a)

15	Construction Loan Provisions	Required. Bus. & Prof. Code § 7163.	Not Required.
16	Swimming Pool Loan Conditions	Required. Bus. & Prof. Code § 7165.	Not Required.
17	Solar Energy Disclosure to “Consumer”.	Required. Bus. & Prof. Code § 7169	Not required unless a single family home. Bus. & Prof. Code § 7163.
18	Schedule of Progress Payments.	Required, on milestone basis. Bus. & Prof. Code § 7159(d)(9).	Not required, but advisable, based on milestone or percentage completion basis.
19	Information re Contractors State License Board	Required. Bus. Prof. Code § 7159(w)(5)	Not Required.
20	Schedule of Progress Payments.	Required, on milestone basis. Bus. & Prof. Code § 7159(d)(9).	Not required, but advisable, based on milestone or percentage completion basis.
21	Prompt Payment, Late Payment Penalties, Stop Work Notice.	Imposed by law, non-waivable. Civil Code §§ 8800-8820; 8830-8848.	Imposed by law, non-waivable. Civil Code §§ 8800-8820; 8830-8848.
22	Notice re Lien Release.	Required. Bus. & Prof. Code § 7159(c)(4).	Required for new home construction. Bus. & Prof. Code § 7164(a)(4).  Not otherwise required.

23	Mechanics Lien Release Notice.	Required. Bus. & Prof. Code § 7159(c)(4) (d).	Required for new home construction. Bus. & Prof. Code § 7164(b)(5).  Required for Swimming Pool Contracts. Bus. & Prof. Code § 7167(a).  Not otherwise required.
24	Mechanics Lien Releases, Forms.	No advance release of lien. Required forms. Civil Code §§ 8132-8138.	No advance release of lien. Required forms. Civil Code §§ 8132-8138.
25	Liability Insurance Notice and Disclosure.	Required. Bus. & Prof. Code § 7159(e)(2).	Required for new home construction. Bus. & Prof. Code § 7164(b)(5).  Not otherwise required.
26	Workers Compensation Notice and Insurance.	Notice required. Bus. & Prof. Code § 7159(e)(2).  Insurance required for all employees and non-licensed “independent contractors”. Bus. & Prof. Code §§ 7125-7127.	Notice not required. Bus. & Prof. Code §§ 7125-7127.  Insurance required for all employees and non-licensed “independent contractors”.

27	Builders Risk Property Damage Insurance.	Not required, but clarification of who obtains, pays for, and benefits from this coverage are advisable.	Not required, but clarification of who obtains, pays for, and benefits from this coverage are advisable.
28	Indemnity	Not required but is often included, for benefit of the property owner.  Note limits on indemnity. Civil Code §§ 2782 et seq.	Not required but is often included, for benefit of the property owner.  Note limits on indemnity. Civil Code §§ 2782 et seq
29	Notice of Right to Payment/Performance Bond.	Required. Bus. & Prof. Code § 7159(c)(6).	Required for new home construction. Bus. & Prof. Code § 7164(d).  Not otherwise required.  Owner required by law to post bond for large projects other than single family home, but not otherwise required. Civil Code §§ 8700-8730.
30	Delay Damages/ Liquidated Damages	Not required, but advisable to protect owner.	Not required, but advisable to protect owner.
31	Warranty	Not required, but advisable. Extended statute of repose for below standard work. Civil Code § 337.15.	Not required, but advisable. Extended statute of repose for below standard work. Civil Code § 337.15.
32	Termination for Cause or for Convenience Clauses.	Contractor's statutory stop work notice. Civil Code §§ 8830-8848. Not otherwise required, but advisable.	Contractor's statutory stop work notice. Civil Code §§ 8830-8848. Not otherwise required, but advisable.



33	Mediation.	Not required, but is often included.	Not required, but is often included
34	Arbitration Notice/Consent Provision.	Yes, if 4 Residential Units or less. Bus. & Prof Code § 7191. But may be pre-empted by Federal Arbitration Act.	Yes, if 4 Residential Units or less. Bus. & Prof Code § 7191.  Not otherwise required. But may be pre-empted by Federal Arbitration Act.
35	Special Arbitration Terms.	Arbitration is not required, but is often included in Construction Contracts.  Provision can be drafted to require arbitrator to follow law and evidence. See <i>Cable Connection, Inc. v. DIRECTV, Inc.</i> , 44 Cal. 4th 1334, 1356 (2008).	Arbitration is not required, but is often included in Construction Contracts.  Provision can be drafted to require arbitrator to follow law and evidence. See <i>Cable Connection, Inc. v. DIRECTV, Inc.</i> , 44 Cal. 4th 1334, 1356 (2008).
36	Attorney Fees.	Not required, but is often included.  Statutory fees for fraud, swimming pool contract, and prompt payment disputes. Bus. & Prof. Code §§ 7160, 7168. Civil Code § 8802( c), 8818(b)	Not required, but is often included.  Statutory fees for fraud, swimming pool contract, and prompt payment disputes. Bus. & Prof. Code §§ 7160, 7168. Civil Code § 8802( c), 8818(b)

**N.B.**The contents of this Article **do not constitute legal advice** or create an attorney-client relationship, and **you may NOT rely on it** without seeking legal advice regarding your particular situation from a competent California Construction lawyer or Construction Contracts attorney.

Please also note that factual situations vary, and statutes, regulations and case law are frequently changing and evolving, and these materials thus also may now be or may become outdated or incorrect.

For further information on this topic and how the current law may apply to your unique contract, job, payment claim and issues, Contact Us via email, phone (415)788-1881 or visit our website at [www.wolfflaw.com](http://www.wolfflaw.com) for other contact information.

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