

## Strict Rules for Home Remodel Contracts in California

Home remodeling in California is governed by strict contracting laws intended to protect consumers. The Contractors State Licensing Board, (“CSLB”) is particularly concerned about contractors working without permits, contractors taking payment in excess of the value of the work complete—including deposits in excess of \$1000—and contractors refusing to complete projects. They are also concerned about contractors who fail to comply with the Home Improvement Contract (“HIC”) laws. At a minimum, it takes six pages of contract language for an HIC to comply with California law. Most contractors do not get it right, leaving themselves exposed to license discipline, misdemeanor criminal prosecution, and void contracts. The stakes are high, and contractors are advised to learn and comply with the HIC laws.

### Some specifics

HICs between the owner (or tenant) and contractor for residential work of over \$500 must comply with detailed laws specifying such things as contract price, contract start and end dates, description of the work, amount of deposit, required warnings, and disclosure of insurance information. The rules delve into minutia such as requiring that certain headings and warnings be typed in 10 or 12-point boldface type; certain warnings must be stated verbatim; the signature must be on the first page; notice of the consumer’s right to cancel must be located near the signature; and notice of the consumer’s right to receive a signed copy of the contract must be stated. These detailed rules are found [here](#).<sup>1</sup> These rules do not apply to subcontracts between the direct contractor and its subcontractors and suppliers.

Importantly, the contract price must be a fixed sum, stated in dollars and cents. (California Business and Professions Code section 7159(d)(5).<sup>2</sup>) So too, an HIC must also have a schedule of progress payments, and each progress payment “shall be stated in dollars and cents and specifically reference the amount of work or services to be performed and any materials or equipment to be supplied.” (§7159(d)(9)(B).) Change orders to HICs also must be on a fixed-price basis. (§7159.6.)

### Consequences for Violations

Failure to comply with these rules potentially subjects the contractor's license to discipline and the contractor to criminal prosecution.<sup>3</sup> The CSLB is authorized to and has started issuing citations, like traffic tickets, of up to \$5000 for using a form of contract that fails to comply completely with the HIC laws. Importantly, the homeowner may void a noncompliant contract,<sup>4</sup> in their sole discretion, thus tossing out a contract containing terms (including markup) that otherwise would be favorable to the contractor. If the homeowner voids the contract, the contractor is entitled to be paid the “reasonable value of the work,” which can be difficult for the contractor to prove.

### Violations Widespread

Most contractors' contracts do not comply with these rules, predominantly by failing to include required warnings, language, and formatting. Many contractor stake illegal deposits, perhaps without even knowing it, in the form of payments up front for long-lead items, such as windows, doors and cabinets.

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For example, it is a crime for a contractor to accept a deposit check from the homeowner to fund a window manufacturer's requirement for a 50% down payment before fabrication begins. Other contractors take the statutory \$1,000 deposit, then charge a move-in fee of many thousands of dollars on the first day they arrive on the job. The problem with taking these payments, from the licensing board's point of view, is that it puts the homeowner at risk of not receiving value for the money given. Under the law, these risks are supposed to fall solely on the contractor.

**T&M and Cost Plus Fee--with or without Guaranteed Maximum Price--Are Not Legal**

There is much confusion in the industry whether time and materials or cost-plus contracts are legal for HICs in California. For example, the Marin Builders Association published an article entitled: "[\*Cost Plus Contract: A Win-Win for Homeowners and Contractors in Marin County\*](#)"<sup>5</sup> in which the author recommends cost-plus contracts for home remodeling but fails to recognize that such contracts are illegal. That author is in good company, however, because even self-described construction lawyers get it wrong. One states "A time and materials contract for construction is perfectly legal in California, if you agreed to it . . ." and another states, "Generally, T&M contracts for home improvement projects are allowed."<sup>6</sup>

These folks are mistaken, because T&M and Cost-Plus contracts violate the law by failing to state the total contract amount, failing to identify start and stop dates, and failing to provide a firm payment schedule referencing the completed work and stated in dollars and cents. The CLSB declares its interpretation that such contracts are illegal in its newsletter article entitled [\*Time and Material Contracts Not Legal for Home Improvement\*](#).<sup>7</sup>

These contracts are problematic and not suitable for consumers for a number of reasons, including that the homeowner does not know the total cost of the project in advance; the homeowner does not know amounts of progress payments in advance; the homeowner lacks the ability to discern how much work has actually been done to advance the project; the homeowner lacks the ability to correlate the accounting information with the work performed; and the homeowner lacks sophistication to know if charges are actually incurred or reasonable—such as if contractors include extra mark-ups, charges belonging to other projects, or charges for the contractors' own mistakes. One homeowner expressed frustration over a T&M project this way:

I get billed bi-monthly, but all I see are names, hours, charges, and sometimes a subcontractor invoice with even less detail. My billings never contain a description of the task performed (i.e. - "shower door install", etc.). The charges are listed by general categories. I now have spent over \$500K, have very little idea of what work has really been done, how much I paid for each task, or which tasks are even complete.<sup>8</sup>

Some contractors, aware of the CSLB's concern about taking payments in excess of the value of the work performed or materials delivered, promote use of schedule of values billing, wherein the parts of the work are itemized by categories—such as framing—and they bill monthly for the percentage of work in each of the categories that has been completed in the previous month. Certain sophisticated owners may be comfortable with this approach, but most of the concerns set forth above still apply.

## Conclusion

Residential contractors ignore the HIC laws at their peril. Too much is at stake to fail to comply, and wise contractors ensure that their HICs are up to snuff, including avoiding T&M and Cost-Plus contracts. The Marin Builders Association and Smith Currie offer workshops on HICs where contractors receive three hours' training and a fully-compliant, long-form HIC at a reasonable cost. Wise contractors attend such workshops or otherwise ensure their contracts comply with law.

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<sup>1</sup> [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=BPC&sectionNum=7159](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC&sectionNum=7159)

<sup>2</sup> Additional references are to the California Business and Professions Code.

<sup>3</sup> "Failure by the licensee, his or her agent or salesperson, or by a person subject to be licensed under this chapter, to provide the specified information, notices, and disclosures in the contract, or to otherwise fail to comply with any provision of this section, is cause for discipline." (§7159a(5)) And "(b) A violation of paragraph (1)[*failure to state entire contract amount, including profit, labor, and materials, in dollars and cents*], (3)[*taking a deposit of more than \$1000*], or (5) [*taking payment for more than the value of the work performed or materials delivered*] of subdivision (a) by a licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment." (§7159.5) (Emphasis added.)

<sup>4</sup> "Generally a contract made in violation of a regulatory statute is void." *Asdourian v. Araj* (1985) 38 Cal. 3d 280.

Courts have created exceptions to prevent unjust enrichment of sophisticated homeowners represented by counsel or an architect. See *Arya Group, Inc. v. Cher* (2000) 77 Cal. App. 4th 611 and *Hinerfeld-Ward, Inc. v. Lipian* (2010) 188 Cal.App.4th 86.

<sup>5</sup> [http://www.marinhomeresourceguide.com/homeresourceguide/2018\\_edition/MobilePagedReplica.action?pm=2&folio=36#pg36](http://www.marinhomeresourceguide.com/homeresourceguide/2018_edition/MobilePagedReplica.action?pm=2&folio=36#pg36)

<sup>6</sup> <https://www.avvo.com/legal-answers/in-california--can-a-contractor-be-required-to-doc-2456317.html>

<sup>7</sup> <http://www.cslb.ca.gov/newsletter/2010-summer/page9.htm>

<sup>8</sup> <https://www.avvo.com/legal-answers/in-california--can-a-contractor-be-required-to-doc-2456317.html>