

Introduced by Senator Aanestad

February 26, 2009

An act to amend Sections 7030, 7159, and 7159.5 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 436, as introduced, Aanestad. Contractors.

Existing law provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law requires a home improvement contract, as defined, to be in writing and to contain certain information, notices, and statements. Existing law requires certain of those notices and statements to be in at least 10-point or 12-point boldface type, as specified. Existing law also provides that a contractor furnishing a bond, bond equivalent, or joint control approved by the registrar of contractors need not include, as part of the contract, certain of those notices and statements.

This bill would additionally provide that a contractor furnishing a performance and payment bond need not include, as part of the contract, a notice stating that the owner or tenant has the right to require the contractor to have a performance and payment bond provided that the contractor gives the owner tangible evidence of the bond, as specified, and would also provide that a contractor furnishing a bond, bond equivalent, or joint control is exempt from certain typeface point size requirements as long as the required notices and statements meet specified legibility and readability standards. The bill would also make conforming changes to related provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 7030 of the Business and Professions Code is amended to read:

7030. (a) Except for contractors writing home improvement contracts pursuant to Section 7151.2 and contractors writing service and repair contracts pursuant to Section 7159.10, every person licensed pursuant to this chapter shall include the following statement in at least 10-point type on all written contracts with respect to which the person is a prime contractor:

“Contractors are required by law to be licensed and regulated by the Contractors’ State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors’ State License Board, P.O. Box 26000, Sacramento, CA 95826.”

(b) ~~Every~~ Except as provided in paragraph (8) of subdivision (a) of Section 7159.5, every person licensed pursuant to this chapter shall include the following statement in at least 12-point type in all home improvement contracts written pursuant to Section 7151.2 and service and repair contracts written pursuant to Section 7159.10:

“Information about the Contractors’ State License Board (CSLB): CSLB is the state consumer protection agency that licenses and regulates construction contractors.

Contact CSLB for information about the licensed contractor you are considering, including information about disclosable complaints, disciplinary actions and civil judgments that are reported to CSLB.

Use only licensed contractors. If you file a complaint against a licensed contractor within the legal deadline (usually four years), CSLB has authority to investigate the complaint. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be in civil court, and you

1 may be liable for damages arising out of any injuries to the
2 unlicensed contractor or the unlicensed contractor's employees.

3 For more information:

4 Visit CSLB's Web site at www.cslb.ca.gov

5 Call CSLB at 800-321-CSLB (2752)

6 Write CSLB at P.O. Box 26000, Sacramento, CA 95826.”

7
8 (c) Failure to comply with the notice requirements set forth in
9 subdivision (a) or (b) of this section is cause for disciplinary action.

10 (d) This section shall become operative on January 1, 2006.

11 SEC. 2. Section 7159 of the Business and Professions Code is
12 amended to read:

13 7159. (a) (1) This section identifies the projects for which a
14 home improvement contract is required, outlines the contract
15 requirements, and lists the items that shall be included in the
16 contract, or may be provided as an attachment.

17 (2) This section does not apply to service and repair contracts
18 that are subject to Section 7159.10, *if provided* the contract for the
19 applicable services complies with Sections 7159.10 to 7159.14,
20 inclusive.

21 (3) This section does not apply to the sale, installation, and
22 servicing of a fire alarm sold in conjunction with an alarm system,
23 as defined in subdivision (n) of Section 7590.1, *if provided* all
24 costs attributable to making the fire alarm system operable,
25 including sale and installation costs, do not exceed five hundred
26 dollars (\$500), and the licensee complies with the requirements
27 set forth in Section 7159.9.

28 (4) This section does not apply to any costs associated with
29 monitoring a burglar or fire alarm system.

30 (5) Failure by the licensee, his or her agent or salesperson, or
31 by a person subject to be licensed under this chapter, to provide
32 the specified information, notices, and disclosures in the contract,
33 or to otherwise fail to comply with any provision of this section,
34 is cause for discipline.

35 (b) For purposes of this section, “home improvement contract”
36 means an agreement, whether oral or written, or contained in one
37 or more documents, between a contractor and an owner or between
38 a contractor and a tenant, regardless of the number of residence
39 or dwelling units contained in the building in which the tenant
40 resides, if the work is to be performed in, to, or upon the residence

1 or dwelling unit of the tenant, for the performance of a home
2 improvement, as defined in Section 7151, and includes all labor,
3 services, and materials to be furnished and performed thereunder,
4 if the aggregate contract price specified in one or more
5 improvement contracts, including all labor, services, and materials
6 to be furnished by the contractor, exceeds five hundred dollars
7 (\$500). “Home improvement contract” also means an agreement,
8 whether oral or written, or contained in one or more documents,
9 between a salesperson, whether or not he or she is a home
10 improvement salesperson, and an owner or a tenant, regardless of
11 the number of residence or dwelling units contained in the building
12 in which the tenant resides, which provides for the sale, installation,
13 or furnishing of home improvement goods or services.

14 (c) In addition to the specific requirements listed under this
15 section, every home improvement contract and any person subject
16 to licensure under this chapter or his or her agent or salesperson
17 shall comply with all of the following:

18 (1) The writing shall be legible.

19 (2) Any printed form shall be readable. Unless a larger typeface
20 is specified in this article, text in any printed form shall be in at
21 least 10-point typeface and the headings shall be in at least 10-point
22 boldface type, *except as provided in paragraph (8) of subdivision*
23 *(a) of Section 7159.5.*

24 (3) (A) Before any work is started, the contractor shall give the
25 buyer a copy of the contract signed and dated by both the contractor
26 and the buyer. The buyer’s receipt of the copy of the contract
27 initiates the buyer’s rights to cancel the contract pursuant to
28 Sections 1689.5 to 1689.14, inclusive, of the Civil Code.

29 (B) ~~The~~ *Except as provided in paragraph (8) of subdivision (a)*
30 *of Section 7159.5, the* contract shall contain on the first page, in a
31 typeface no smaller than that generally used in the body of the
32 document, both of the following:

33 (i) The date the buyer signed the contract.

34 (ii) The name and address of the contractor to which the
35 applicable “Notice of Cancellation” is to be mailed, immediately
36 preceded by a statement advising the buyer that the “Notice of
37 Cancellation” may be sent to the contractor at the address noted
38 on the contract.

39 (4) A statement that, upon satisfactory payment being made for
40 any portion of the work performed, the contractor *shall*, prior to

1 any further payment being made, ~~shall~~ furnish to the person
2 contracting for the home improvement or swimming pool work a
3 full and unconditional release from any claim or mechanic's lien
4 pursuant to Section 3114 of the Civil Code for that portion of the
5 work for which payment has been made.

6 (5) A change-order form for changes or extra work shall be
7 incorporated into the contract and shall become part of the contract
8 only if it is in writing and signed by the parties prior to the
9 commencement of any work covered by a change order.

10 (6) ~~The~~ *Except as provided in paragraph (8) of subdivision (a)*
11 *of Section 7159.5, the* contract shall contain, in close proximity to
12 the signatures of the owner and contractor, a notice stating that the
13 owner or tenant has the right to require the contractor to have a
14 performance and payment bond.

15 (7) If the contract provides for a contractor to furnish joint
16 control, the contractor shall not have any financial or other interest
17 in the joint control.

18 (8) The provisions of this section are not exclusive and do not
19 relieve the contractor from compliance with any other applicable
20 provision of law.

21 (d) A home improvement contract and any changes to the
22 contract shall be in writing and signed by the parties to the contract
23 prior to the commencement of work covered by the contract or ~~an~~
24 applicable change order and, except as provided in paragraph (8)
25 of subdivision (a) of Section 7159.5, shall include or comply with
26 all of the following:

27 (1) The name, business address, and license number of the
28 contractor.

29 (2) If applicable, the name and registration number of the home
30 improvement salesperson that solicited or negotiated the contract.

31 (3) The following heading on the contract form that identifies
32 the type of contract in at least 10-point boldface type: "Home
33 Improvement."

34 (4) The following statement in at least 12-point boldface type:
35 "You are entitled to a completely filled in copy of this agreement,
36 signed by both you and the contractor, before any work may be
37 started."

38 (5) The heading: "Contract Price," followed by the amount of
39 the contract in dollars and cents.

(6) If a finance charge will be charged, the heading: “Finance Charge,” followed by the amount in dollars and cents. The finance charge is to be set out separately from the contract amount.

(7) The heading: “Description of the Project and Description of the Significant Materials to be Used and Equipment to be Installed,” followed by a description of the project and a description of the significant materials to be used and equipment to be installed. For swimming pools, the project description required under this paragraph also shall include a plan and scale drawing showing the shape, size, dimensions, and the construction and equipment specifications.

(8) If a downpayment will be charged, the details of the downpayment shall be expressed in substantially the following form, and shall include the text of the notice as specified in subparagraph (C):

(A) The heading: ~~“Downpayment.”~~ “*Down Payment.*”

(B) A space where the actual downpayment appears.

(C) The following statement in at least 12-point boldface type:
“~~THE DOWNPAYMENT~~ *DOWN PAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.*”

(9) If *any* payments, other than the downpayment, are to be made before the project is completed, the details of these payments, known as progress payments, shall be expressed in substantially the following form, and shall include the text of the statement as specified in subparagraph (C):

(A) A schedule of progress payments shall be preceded by the heading: “Schedule of Progress Payments.”

(B) 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 and equipment to be supplied.

(C) The section of the contract reserved for the progress payments shall include the following statement in at least 12-point boldface type:

“The schedule of progress payments must specifically describe each phase of work, including the type and amount of work or services scheduled to be supplied in each phase, along with the amount of each proposed progress payment. IT IS AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR MATERIALS NOT

1 YET DELIVERED. HOWEVER, A CONTRACTOR MAY
2 REQUIRE A ~~DOWNPAYMENT.~~ *DOWN PAYMENT.*"

3 (10) The contract shall address the commencement of work to
4 be performed in substantially the following form:

5 (A) A statement that describes what constitutes substantial
6 commencement of work under the contract.

7 (B) The heading: "Approximate Start Date."

8 (C) The approximate date on which work will be commenced.

9 (11) The estimated completion date of the work shall be
10 referenced in the contract in substantially the following form:

11 (A) The heading: "Approximate Completion Date."

12 (B) The approximate date of completion.

13 (12) If applicable, the heading: "List of Documents to be
14 Incorporated into the Contract," followed by the list of documents
15 incorporated into the contract.

16 (13) The heading: "Note about Extra Work and Change Orders,"
17 followed by the following statement:

18 "Extra Work and Change Orders become part of the contract
19 once the order is prepared in writing and signed by the parties prior
20 to the commencement of *any* work covered by the new change
21 order. The order must describe the scope of the extra work or
22 change, the cost to be added or subtracted from the contract, and
23 the effect the order will have on the schedule of progress
24 payments."

25 (e) Except as provided in paragraph (8) of subdivision (a) of
26 Section 7159.5, all of the following notices shall be provided to
27 the owner as part of the contract form as specified or, if otherwise
28 authorized under this subdivision, may be provided as an
29 attachment to the contract:

30 (1) A notice concerning commercial general liability insurance.
31 This notice may be provided as an attachment to the contract if
32 the contract includes the following statement: "A notice concerning
33 commercial general liability insurance is attached to this contract."
34 The notice shall include the heading "Commercial General Liability
35 Insurance (CGL)," followed by whichever of the following
36 statements is both relevant and correct:

37 (A) "(The name on the license or 'This contractor') does not
38 carry commercial general liability insurance."

39 (B) "(The name on the license or 'This contractor') carries
40 commercial general liability insurance written by (the insurance

1 company). You may call (the insurance company) at _____
2 to check the contractor's insurance coverage."

3 (C) "(The name on the license or 'This contractor') is
4 self-insured."

5 (2) A notice concerning workers' compensation insurance. This
6 notice may be provided as an attachment to the contract if the
7 contract includes the statement: "A notice concerning workers'
8 compensation insurance is attached to this contract." The notice
9 shall include the heading "Workers' Compensation Insurance"
10 followed by whichever of the following statements is correct:

11 (A) "(The name on the license or 'This contractor') has no
12 employees and is exempt from workers' compensation
13 requirements."

14 (B) "(The name on the license or 'This contractor') carries
15 workers' compensation insurance for all employees."

16 (3) A notice that provides the buyer with the following
17 information about the performance of extra or change-order work:

18 (A) A statement that the buyer may not require a contractor to
19 perform extra or change-order work without providing written
20 authorization prior to the commencement of *any* work covered by
21 the new change order.

22 (B) A statement informing the buyer that extra work or a change
23 order is not enforceable against a buyer unless the change order
24 also identifies all of the following in writing prior to the
25 commencement of *any* work covered by the new change order:

26 (i) The scope of work encompassed by the order.

27 (ii) The amount to be added or subtracted from the contract.

28 (iii) The effect the order will make in the progress payments or
29 the completion date.

30 (C) A statement informing the buyer that the contractor's failure
31 to comply with the requirements of this paragraph does not
32 preclude the recovery of compensation for work performed based
33 upon legal or equitable remedies designed to prevent unjust
34 enrichment.

35 (4) A notice with the heading "Mechanics' Lien Warning"
36 written as follows:

37
38 "MECHANICS' LIEN WARNING:

39 Anyone who helps improve your property, but who is not paid,
40 may record what is called a mechanics' lien on your property. A

1 mechanics' lien is a claim, like a mortgage or home equity loan,
2 made against your property and recorded with the county recorder.

3 Even if you pay your contractor in full, unpaid subcontractors,
4 suppliers, and laborers who helped to improve your property may
5 record mechanics' liens and sue you in court to foreclose the lien.
6 If a court finds the lien is valid, you could be forced to pay twice
7 or have a court officer sell your home to pay the lien. Liens can
8 also affect your credit.

9 To preserve their right to record a lien, each subcontractor and
10 material supplier must provide you with a document called a
11 '20-day Preliminary Notice.' This notice is not a lien. The purpose
12 of the notice is to let you know that the person who sends you the
13 notice has the right to record a lien on your property if he or she
14 is not paid.

15 BE CAREFUL. The Preliminary Notice can be sent up to 20
16 days after the subcontractor starts work or the supplier provides
17 material. This can be a big problem if you pay your contractor
18 before you have received the Preliminary Notices.

19 You will not get Preliminary Notices from your prime contractor
20 or from laborers who work on your project. The law assumes that
21 you already know they are improving your property.

22 PROTECT YOURSELF FROM LIENS. You can protect
23 yourself from liens by getting a list from your contractor of all the
24 subcontractors and material suppliers that work on your project.
25 Find out from your contractor when these subcontractors started
26 work and when these suppliers delivered goods or materials. Then
27 wait 20 days, paying attention to the Preliminary Notices you
28 receive.

29 PAY WITH JOINT CHECKS. One way to protect yourself is
30 to pay with a joint check. When your contractor tells you it is time
31 to pay for the work of a subcontractor or supplier who has provided
32 you with a Preliminary Notice, write a joint check payable to both
33 the contractor and the subcontractor or material supplier.

34 For other ways to prevent liens, visit CSLB's *Internet* Web site
35 at www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

36 REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING
37 A LIEN PLACED ON YOUR HOME. This can mean that you
38 may have to pay twice, or face the forced sale of your home to pay
39 what you owe."
40

(5) The following notice shall be provided in at least 12-point typeface:

“Information about the Contractors’ State License Board (CSLB): CSLB is the state consumer protection agency that licenses and regulates construction contractors.

Contact CSLB for information about the licensed contractor you are considering, including information about disclosable complaints, disciplinary actions; and civil judgments that are reported to CSLB.

Use only licensed contractors. If you file a complaint against a licensed contractor within the legal deadline (usually four years), CSLB has authority to investigate the complaint. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be in civil court, and you may be liable for damages arising out of any injuries to the unlicensed contractor or the unlicensed contractor’s employees.

For more information:

Visit CSLB’s *Internet* Web site at www.cslb.ca.gov

Call CSLB at 800-321-CSLB (2752)

Write CSLB at P.O. Box 26000, Sacramento, CA 95826.”

(6) (A) The notice set forth in subparagraph (B) and entitled “Three-Day Right to Cancel,” shall be provided to the buyer unless the contract is:

(i) Negotiated at the contractor’s place of business.

(ii) Subject to the “Seven-Day Right to Cancel,” as set forth in paragraph ~~(7)~~ (8).

(iii) Subject to licensure under the Alarm Company Act (Chapter 11.6 (commencing with Section 7590)), provided the alarm company licensee complies with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

(B) “Three-Day Right to Cancel

You, the buyer, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor’s place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this

notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received ~~them~~, *it, any* goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor's instructions on how to return the goods at the contractor's expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract."

(C) The "Three-Day Right to Cancel" notice required by this paragraph shall comply with all of the following:

- (i) The text of the notice is at least 12-point boldface type.
- (ii) The notice is in immediate proximity to a space reserved for the owner's signature.
- (iii) The owner acknowledges receipt of the notice by signing and dating the notice form in the signature space.
- (iv) The notice is written in the same language, e.g., Spanish, as that principally used in any oral sales presentation.
- (v) The notice may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: "The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a 'Notice of the Three-Day Right to Cancel.'"
- (vi) The notice shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which also attached to the agreement or offer to purchase and be easily detachable, and which shall contain the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

/enter date of transaction/

1 _____
2 (Date)

3
4 “You may cancel this transaction, without any penalty or
5 obligation, within three business days from the above date.

6 If you cancel, any property traded in, any payments made by
7 you under the contract or sale, and any negotiable instrument
8 executed by you will be returned within 10 days following receipt
9 by the seller of your cancellation notice, and any security interest
10 arising out of the transaction will be canceled.

11 If you cancel, you must make available to the seller at your
12 residence, in substantially as good condition as when received,
13 any goods delivered to you under this contract or sale, or you may,
14 if you wish, comply with the instructions of the seller regarding
15 the return shipment of the goods at the seller’s expense and risk.

16 If you do make the goods available to the seller and the seller
17 does not pick them up within 20 days of the date of your notice of
18 cancellation, you may retain or dispose of the goods without any
19 further obligation. If you fail to make the goods available to the
20 seller, or if you agree to return the goods to the seller and fail to
21 do so, then you remain liable for performance of all obligations
22 under the contract.”

23
24 To cancel this transaction, mail or deliver a signed and dated copy of this
25 cancellation notice, or any other written notice, or send a telegram
26 to _____,

27 /name of seller/
28 at _____

29 /address of seller’s place of business/
30 not later than midnight of _____.

31 (Date)

32 I hereby cancel this transaction. _____
33 (Date)

34 _____
35 (Buyer’s signature)

36
37 (7) (A) The following notice entitled “Seven-Day Right to
38 Cancel” shall be provided to the buyer for any contract that is
39 written for the repair or restoration of residential premises damaged
40 by any sudden or catastrophic event for which a state of emergency

has been declared by the President of the United States or the Governor, or for which a local emergency has been declared by the executive officer or governing body of any city, county, or city and county:

“Seven-Day Right to Cancel

You, the buyer, have the right to cancel this contract within seven business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor’s place of business by midnight of the seventh business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received ~~them~~, *it, any* goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor’s instructions on how to return the goods at the contractor’s expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.”

(B) The “Seven-Day Right to Cancel” notice required by this subdivision shall comply with all of the following:

(i) The text of the notice is at least 12-point boldface type.

(ii) The notice is in immediate proximity to a space reserved for the owner’s signature.

(iii) The owner acknowledges receipt of the notice by signing and dating the notice form in the signature space.

(iv) The notice is written in the same language, e.g., Spanish, as that principally used in any oral sales presentation.

(v) The notice may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: “The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox

1 if the contractor has given you a 'Notice of the Seven-Day Right
2 to Cancel.' ”

3
4 (vi) The notice shall be accompanied by a completed form in
5 duplicate, captioned “Notice of Cancellation,” which shall also be
6 attached to the agreement or offer to purchase and be easily
7 detachable, and which shall contain the following statement written
8 in the same language, e.g., Spanish, as used in the contract:

9
10 “Notice of Cancellation”

11 /enter date of transaction/
12 _____

13 (Date)
14

15 “You may cancel this transaction, without any penalty or
16 obligation, within seven business days from the above date.

17 If you cancel, any property traded in, any payments made by
18 you under the contract or sale, and any negotiable instrument
19 executed by you will be returned within 10 days following receipt
20 by the seller of your cancellation notice, and any security interest
21 arising out of the transaction will be canceled.

22 If you cancel, you must make available to the seller at your
23 residence, in substantially as good condition as when received,
24 any goods delivered to you under this contract or sale, or you may,
25 if you wish, comply with the instructions of the seller regarding
26 the return shipment of the goods at the seller’s expense and risk.

27 If you do make the goods available to the seller and the seller
28 does not pick them up within 20 days of the date of your notice of
29 cancellation, you may retain or dispose of the goods without any
30 further obligation. If you fail to make the goods available to the
31 seller, or if you agree to return the goods to the seller and fail to
32 do so, then you remain liable for performance of all obligations
33 under the contract.”

34
35 To cancel this transaction, mail or deliver a signed and dated copy of this
36 cancellation notice, or any other written notice, or send a telegram

37 to _____,

38 /name of seller/

39 a t _____

40 /address of seller’s place of business/

not later than midnight of _____.

(Date)

I hereby cancel this transaction. _____

(Date)

(Buyer's signature)

SEC. 3. Section 7159.5 of the Business and Professions Code is amended to read:

7159.5. This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction.

(a) Failure by the licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, to comply with the following provisions is cause for discipline:

(1) The contract shall be in writing and shall include the agreed contract amount in dollars and cents. The contract amount shall include the entire cost of the contract, including profit, labor, and materials, but excluding finance charges.

(2) If there is a separate finance charge between the contractor and the person contracting for home improvement, the finance charge shall be set out separately from the contract amount.

(3) If a downpayment will be charged, the downpayment may not exceed one thousand dollars (\$1,000) or 10 percent of the contract amount, whichever is less.

(4) If, in addition to a downpayment, the contract provides for payments to be made prior to completion of the work, the contract shall include a schedule of payments in dollars and cents specifically referencing the amount of work or services to be performed and any materials and equipment to be supplied.

(5) Except for a downpayment, the contractor may neither request nor accept payment that exceeds the value of the work performed or material delivered.

(6) Upon any payment by the person contracting for home improvement, and prior to any further payment being made, the contractor shall, if requested, obtain and furnish to the person a full and unconditional release from any potential lien claimant claim or mechanic's lien pursuant to Section 3114 of the Civil

1 Code for any portion of the work for which payment has been
2 made. The person contracting for home improvement may withhold
3 all further payments until these releases are furnished.

4 (7) If the contract provides for a payment of a salesperson's
5 commission out of the contract price, that payment shall be made
6 on a pro rata basis in proportion to the schedule of payments made
7 to the contractor by the disbursing party in accordance with
8 paragraph (4).

9 (8) A contractor furnishing a performance and payment bond,
10 lien and completion bond, or a bond equivalent or joint control
11 approved by the registrar covering full performance and payment
12 is exempt from paragraphs (3), (4), and (5), and need not include,
13 as part of the contract, the statement regarding the downpayment
14 specified in subparagraph (C) of paragraph (8) of subdivision (d)
15 of Section 7159, the details and statement regarding progress
16 payments specified in paragraph (9) of subdivision (d) of Section
17 7159, ~~or~~ the Mechanics' Lien Warning specified in paragraph (4)
18 of subdivision (e) of Section 7159, *or, when the contractor*
19 *furnishes a performance and payment bond, the notice specified*
20 *in paragraph (6) of subdivision (c) of Section 7159 provided that*
21 *the contractor gives the owner tangible evidence of the*
22 *performance and payment bond applicable to the project, and is*
23 *also exempt from the various typeface point size requirements in*
24 *subdivision (b) of Section 7030 and subdivisions (c), (d), and (e)*
25 *of Section 7159 as long as the other requirements of paragraphs*
26 *(1) and (2) of subdivision (c) of Section 7159 are met.* A contractor
27 furnishing these bonds, bond equivalents, or a joint control
28 approved by the registrar may accept payment prior to completion.
29 If the contract provides for a contractor to furnish joint control,
30 the contractor shall not have any financial or other interest in the
31 joint control.

32 (b) A violation of paragraph (1), (3), or (5) of subdivision (a)
33 by a licensee or a person subject to be licensed under this chapter,
34 or by his or her agent or salesperson, is a misdemeanor punishable
35 by a fine of not less than one hundred dollars (\$100) nor more than
36 five thousand dollars (\$5,000), or by imprisonment in a county
37 jail not exceeding one year, or by both that fine and imprisonment.

38 (1) An indictment or information against a person who is not
39 licensed but who is required to be licensed under this chapter shall
40 be brought, or a criminal complaint filed, for a violation of this

1 section, in accordance with paragraph (4) of subdivision (d) of
2 Section 802 of the Penal Code, within four years from the date of
3 the contract or, if the contract is not reduced to writing, from the
4 date the buyer makes the first payment to the contractor.

5 (2) An indictment or information against a person who is
6 licensed under this chapter shall be brought, or a criminal complaint
7 filed, for a violation of this section, in accordance with paragraph
8 (2) of subdivision (d) of Section 802 of the Penal Code, within
9 two years from the date of the contract or, if the contract is not
10 reduced to writing, from the date the buyer makes the first payment
11 to the contractor.

12 (3) The limitations on actions in this subdivision shall not apply
13 to any administrative action filed against a licensed contractor.

14 (c) Any person who violates this section as part of a plan or
15 scheme to defraud an owner or tenant of a residential or
16 nonresidential structure, including a mobilehome or manufactured
17 home, in connection with the offer or performance of repairs to
18 the structure for damage caused by a natural disaster, shall be
19 ordered by the court to make full restitution to the victim based
20 on the person's ability to pay, as defined in subdivision (e) of
21 Section 1203.1b of the Penal Code. In addition to full restitution,
22 and imprisonment authorized by this section, the court may impose
23 a fine of not less than five hundred dollars (\$500) nor more than
24 twenty-five thousand dollars (\$25,000), based upon the defendant's
25 ability to pay. This subdivision applies to natural disasters for
26 which a state of emergency is proclaimed by the Governor pursuant
27 to Section 8625 of the Government Code, or for which an
28 emergency or major disaster is declared by the President of the
29 United States.