



CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS  
 DIVISION OF LEGAL AFFAIRS  
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## *Legal Guide W-10*

# OVERVIEW OF CALIFORNIA'S HEALTH STUDIO SERVICES CONTRACT LAW

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California's health studio services contract law applies to all contracts for health studio services in California.<sup>1</sup>

Health studio services include instruction, training or assistance in physical culture, body building, exercising, reducing, figure development and other similar skills; the use of a health studio, gym or other facility for any of these purposes; and membership in any group formed for any of these purposes. However, services provided by persons licensed in the healing arts, by nutritionists, and by schools operating under the California Education Code, are not subject to this law.<sup>2</sup>

All health studio contracts must be in writing.<sup>3</sup> The contract may not require payments that total more than \$1,000 (apart from finance charges) over the contract term.<sup>4</sup> The duration of the contract may not exceed three years, and the contract may not require payments for longer than the term of the contract.<sup>5</sup> That means that a *four-year* contract would be unlawful, and that a two-year contract requiring payments for longer than *two years* also would be unlawful. The duration of the contract also may not be measured by the life of the buyer,<sup>6</sup> which means that "lifetime contracts" are prohibited. The contract must state the length of the contract term in a size equal to at least 14-point type, near the place for the buyer's signature.<sup>7</sup>

The contract must include the name and address of the company that provides the health studio services, and the date on which the buyer signs the contract. A copy of the contract must be given to the buyer when he or she signs it.<sup>8</sup>

If the facility is not already operating when the contract is signed, the contract must state when the facility will be open and available for use. The facility must open for use within six months of the date when the contract is signed.<sup>9</sup>

The contract must contain a provision that gives the buyer a three-day right to cancel the contract. The face of the contract must conspicuously disclose the following notice, in a size equal to at least 10-point bold type, close to the place for the buyer's signature:

**"You, the buyer, may cancel this agreement at any time prior to the midnight of the third business day of the health studio after the date of this agreement, excluding Sundays and holidays. To cancel this agreement, mail or deliver a signed or dated notice, or send a telegram which states that you, the buyer, are canceling this agreement, or words of similar effect. Such notice shall be sent to \_\_\_\_\_ (Name of health studio operator) at \_\_\_\_\_ (Address of health studio operator)."**<sup>10</sup>

The buyer has the right to cancel the contract until the seller has complied with all of the requirements in the preceding three paragraphs.<sup>11</sup>

In order to cancel the contract, the buyer must mail or deliver a signed and dated notice, or send a telegram, which informs the seller that the buyer has decided to cancel the contract, or words to that effect. The notice must be mailed to or delivered at the seller's address given in the contract. The buyer probably may cancel the contract by sending an e-mail message, although the law does not specifically allow or prohibit this method. Upon cancellation, all payments must be refunded within 10 days, except that the buyer must pay for any services that he or she received prior to cancellation.<sup>12</sup>

**Example:** The buyer may cancel the contract at any time before midnight of the third day that the health studio is open for business after the date that the contract is signed. Sundays and holidays are excluded when counting the three days. For instance, if the contract is signed on Monday, it may be canceled by mailing or delivering notice to the address specified in the contract anytime until midnight on Thursday. If the health club were not open for business on Tuesday, the time for canceling would be extended until midnight on Friday. If the contract were signed on Saturday, the exclusion of Sunday (even if the club were open Sunday) means that it could be canceled by mailing or delivering notice anytime before midnight on Wednesday.

The contract must allow the buyer to cancel if the buyer dies or becomes disabled,<sup>13</sup> and also if the buyer moves more than 25 miles from the facility.<sup>14</sup> The buyer may cancel on either of these grounds at any time.

In order to cancel on the basis of disability, the disability must be of a kind that somehow affects the buyer's capacity to use or enjoy the club's facilities. The condition must be verified by a physician.<sup>15</sup> In the event of the buyer's death, the buyer's representative may cancel the contract. Upon cancellation for either reason, no further payments are required, and a prorated portion of any amount prepaid must be refunded to the buyer or the buyer's representative. The buyer or representative must request the refund.<sup>16</sup>

The buyer also may cancel the contract if he or she moves more than 25 miles from the health studio and is unable to transfer the contract to a comparable facility. In this event, no further payments are required, and a prorated portion of any amount prepaid must be refunded to the buyer.<sup>17</sup> However, a health club may include in its contract a provision that allows it to charge, or to withhold from the refund, a cancellation fee of \$100 (or \$50 if more than half the contract life has expired).<sup>18</sup>

If a contract does not comply with the health studio services contract law, it is void and unenforceable, and therefore subject to cancellation by the buyer on that basis.<sup>19</sup> In the event of a material violation of the law, there is no limit on the time for canceling, except that the buyer probably must notify the seller *promptly* on learning of his or her right to cancel, and ordinarily should give the seller *written* notice of the decision to cancel.

A health studio services contract also is void and unenforceable, and may be canceled by the buyer on that basis, if the buyer is induced to sign the contract by any willfully false or misleading information, representation or advertising by the seller.<sup>20</sup> For instance, if the seller knows or has reason to believe that a material portion of the services or facilities will not be provided or available for use as promised, or if the seller misrepresents anything else that is material to the buyer, that may entitle the buyer to cancel the contract. If a buyer decides to cancel on the basis of the seller's misconduct, the buyer should give written notice of cancellation promptly after the buyer learns of his or her right to cancel. The notice should describe the willfully false or misleading information.

A buyer who is injured by the seller's failure to comply with the health studio services contract law may bring an action against the seller to recover three times the amount of any resulting damages, plus reasonable attorney's fees.<sup>21</sup>

Any failure by a seller to comply with the health studio services contract law can be corrected by the seller, without penalty, within 30 days after the buyer signs the contract, provided that the correction does not increase the periodic payments or the total payable by the buyer (unless the buyer consents in writing to the increase).<sup>22</sup>

The seller's assignment of the contract to a third party (for example, a financing agency) generally does not cut off any claim or defense based on the contract that the buyer has against the seller.<sup>23</sup> For example, if the buyer has canceled, or if the contract is void because the seller provided false or misleading information, the buyer can assert that defense against a third party trying to enforce the contract. However, the third party may cut off the buyer's claims and defenses by giving the buyer notice as prescribed in the health studio services contract law.<sup>24</sup>

This law does not relieve the seller of the duty to comply with other laws that may apply (for instance, the Unruh Retail Installment Sales Act, if by signing the contract, the buyer incurs a legal obligation to pay by installments).<sup>25</sup>

Any purported waiver by the buyer of any rights conferred by this law is void and unenforceable.<sup>26</sup> That means that the requirements of the statute always apply.

For further information, see Legal Guide W-9, "When Your Health Club Closes."

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**NOTICE: We attempt to make our Legal Guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law's application to particular cases should be directed to a specialist.**

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#### ENDNOTES

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1. Civil Code §§ 1812.80-1812.95 (Stats. 1961, ch. 1675); Civil Code § 1812.82.
  2. Civil Code § 1812.81.
  3. Civil Code § 1812.82.
  4. Civil Code §§ 1812.84 and 1812.86.
  5. Civil Code §§ 1812.84 and 1812.86. See also Civil Code 1812.83.
  6. Civil Code § 1812.84(a).
  7. Civil Code § 1812.84(b).
  8. Civil Code §§ 1812.82 and 1812.85(b)(2).
  9. Civil Code § 1812.85(a).
  10. Civil Code § 1812.85(b)(1).
  11. Civil Code § 1812.85(b)(3).
  12. Civil Code §§ 1812.85(b)(1),(4).
  13. Civil Code § 1812.89(a).
  14. Civil Code § 1812.89(b).
  15. Civil Code § 1812.89(a)(3).
  16. Civil Code §§ 1812.89(a)(1),(2),(4).
  17. Civil Code § 1812.89(b)(1).
  18. Civil Code § 1812.89(b)(2).
  19. Civil Code §§ 1812.85(b)(3) and 1812.91.
  20. Civil Code § 1812.92.
  21. Civil Code § 1812.94(a).
  22. Civil Code § 1812.94(b).
  23. Civil Code §§ 1812.87 and 1812.88.
  24. Civil Code § 1812.88.
  25. Civil Code § 1812.90.
  26. Civil Code § 1812.93.