

# NAHB Remodeler

## Beware of Homeowner Rights of Cancellation and Rescission

By Keith Collins

Do you regularly do addition or remodeling jobs involving more than four installment payments (excluding the down payment) for home improvements? If so, where a mechanics lien may attach to the consumer's residence, all remodeling jobs you do may be subject to Regulation Z under 12 C.F.R. 226.

The Federal Notice of Cancellation Requirements for door-to-door sales in 16 C.F.R. 429 are similar to the notice required for the three day right of rescission under Federal Regulation Z. Thus, the two requirements are easily confused. Either may apply to home remodeling contractors. Although Regulation Z is primarily geared to credit sales, it can apply to contractors who do not charge interest or finance the transaction.

In many states, mechanics lien rights attach to the home as a matter of law when work begins, irrespective of whether or not a mechanics lien claim is ever filed against the property. However, there may be a possible "no lien" out for you based on your state's real property law. If so, you may be able to structure your contracts with the homeowner and your subcontractors and materialmen in a manner that could relieve you of responsibility to give the Regulation Z notice based on state "no lien" law.

### Fundamental Requirements of Regulation Z

Basically a three-day notice of rescission rights must be given to the customer at the time the contract is signed. The government has issued model rescission notice language. However, some federal cases have found rescission notices inadequate, which failed to cite the specific state statutes under which lien rights could arise. You need to utilize legal counsel knowledgeable in the state where you operate to determine if your business is subject to Regulation Z or in-home notice requirements. Failure to comply can result in serious financial consequences and even criminal fines and imprisonment.

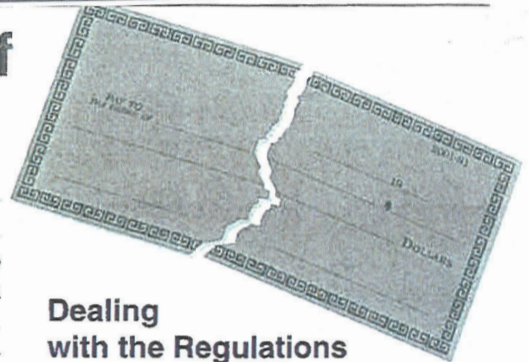
The failure to give the required Regulation Z rescission notice gives the purchaser the right to rescind the contract and ask for a refund. That can happen up to three years after job completion though courts have indicated that the remodeling contractor is en-

titled to recover the "value" of the improvements, at perhaps less than the contract price. Moreover, the rescinding consumer can also recover attorney fees and court costs from a remodeler who has violated Regulation Z. Those remedies are also available to the consumer for up to three years. Subject to a one-year limitation, if finance charges were charged by the remodeler, there is an additional penalty of twice the finance charge. If the work is started before the three-year rescission period expires, that is also a violation of Regulation Z.

### Consequences of Non-Compliance

In addition to the civil risks of noncompliance, willful and knowing violation of the Act is subject to criminal liability. A contractor who commits a violation can be fined up to \$5,000 and imprisoned for up to one year, or both, for the violation.

Even if you do not make contracts involving more than four installment payments for remodeling projects, and you use contracts that cannot result in any lien against the customer's residence, you still must comply with the three-day cancellation notice on contracts signed other than in your office, store or showroom. Additionally, you may be subject to similar state statutes for cooling off periods, in-home sales or door-to-door solicitation.



### Dealing with the Regulations

Unless you are a self-taught legal expert, you should get professional assistance to ensure you are in compliance with the regulations. Have an attorney who is both knowledgeable in the laws applicable to your business and in how you conduct your business, review your contracts and rescission forms. Make certain that your forms and procedures comply with current law in the state or states where you do business.

If enough contractors are unhappy with the red tape and legal expense, the industry may want to consider lobbying to change the cancellation and rescission laws and regulations. Deregulation is currently a buzzword. Until and unless that occurs through statutory and regulatory changes, don't trip on the red tape.

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