



*Legal Guide W-10*

## **OVERVIEW OF CALIFORNIA'S HEALTH STUDIO SERVICES CONTRACT LAW**

*January 2010*

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 and initiation/initial membership fees that total more than \$3,000 not including interest or finance charges (this amount increases to \$4,400 on January 1, 2010) 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. It also 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, above the place for your signature.<sup>6</sup>

The contract must include the name and address of the company that provides the health studio services, and the date on which you sign the contract.<sup>7</sup> A copy of the contract must be given to you when you sign it.<sup>8</sup>

If the health club is not already operating when the contract is signed, the contract must state when the health club will be open and available for use. The health club must open for use within six months of the date when the contract is signed.<sup>9</sup> If the health club has not opened within six months, you may cancel the contract at any time. But if the health club does open after six months, you only have ten days to cancel the contract.<sup>10</sup>

The contract must contain a provision that gives you a five-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 your signature:

**"You, the buyer, may cancel this agreement at any time prior to the midnight of the fifth 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 and dated notice, or send a telegram which states that you, the buyer, are canceling this agreement, or words of similar effect. The notice shall be sent to \_\_\_\_\_ (Name of health studio operator) at (Address of health studio operator)."**<sup>11</sup>

In order to cancel the contract, you must mail or deliver a signed and dated notice, or send a telegram, which informs the health club that you have decided to cancel the contract, or words to that effect. The notice must be mailed to or delivered at the health club's address given in the contract. You

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 after the health club receives notice of the cancellation, except that you must pay for any services that you received prior to cancellation.<sup>12</sup>

**Example:** You may cancel the contract at any time before midnight of the fifth 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 five 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 Saturday. If the health club were not open for business on Tuesday, the time for canceling would be extended until midnight on Monday. 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 Friday.

There is additional time to cancel depending on how much money you will ultimately have to pay the health club under the contract. If the total value of the contract is between \$1,500 and \$2,000, you have 20 days to cancel the contract.<sup>13</sup> If the total amount of money due is between \$2,001 and \$2,500, you have 30 days to cancel.<sup>14</sup> And if the total amount is equal to or greater than \$2,501 you have 45 days to cancel the contract.<sup>15</sup>

The contract must say what facilities and services the contract entitles you to access and receive and must say at what days and hours you may access the facilities. Any facilities, services or times of access that are not described in the contract are optional services and are considered to be separate contracts.<sup>16</sup> If the facilities at the health studio service, such as a swimming pool or tennis court, are eliminated or substantially reduced for more than a temporary basis due to reasonable repairs or improvements, you can cancel at any time. But if the health club told you in the contract that the equipment or classes could be changed then you do not have the right to cancel.<sup>17</sup>

The contract must allow you or your estate to cancel if you become disabled or die,<sup>18</sup> and also if you move more than 25 miles from the facility.<sup>19</sup> You 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 your capacity to use or enjoy the club's facilities. A physician must verify the condition.<sup>20</sup> In the event of your death, your 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 you or your representative. You or your representative must request the refund.<sup>21</sup>

You also may cancel the contract if you move more than 25 miles from the health studio and are 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 you.<sup>22</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 not more than \$100 (or \$50 if more than half the contract life has expired).<sup>23</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 you on that basis.<sup>24</sup> In the event of a significant violation of the law, there is no limit on the time for canceling, except that you probably must notify the health club *promptly* on learning of your right to cancel, and ordinarily you should give the health club *written* notice of the decision to cancel.<sup>25</sup>

A health studio services contract also is void and unenforceable, and may be canceled by you on this basis, if you are induced to sign the contract by any willfully false or misleading information, representation or advertising by the health club.<sup>26</sup> For instance, if the health club knows or has reason to believe that a significant portion of the services or facilities will not be provided or available for use as promised, or if the health club misrepresents anything else that is important to you, that may entitle you to cancel the contract. If you decide to cancel on the basis of the health club's misconduct, you should give written notice of cancellation promptly after you learn of your right to cancel. The notice should describe the willfully false or misleading information.

If you are injured by the health club's failure to comply with the Health Studio Services Contract Law, you may bring an action against the health club to recover three times the amount of any resulting damages, plus reasonable attorney's fees.<sup>27</sup> However, any failure by a health club to comply with Health Studio Services Contract Law can be corrected by the health club, without penalty, within 30 days after you sign the contract, provided that the correction does not increase the periodic payments or the total amount payable by you (unless you consent in writing to the increase).<sup>28</sup> The health club'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 you have against the health club.<sup>29</sup> For example, if you have canceled, or if the contract is void because the health club provided false or misleading information, you can assert that defense against a third party trying to enforce the contract. However, the third party may cut off your claims and defenses by giving you 30 days notice as prescribed in the Health Studio Services Contract Law.<sup>30</sup>

This law does not relieve the health club of the duty to comply with other laws that may apply (for instance, the Unruh Retail Installment Sales Act, if by signing the contract, you incur a legal obligation to pay by installments).<sup>31</sup>

Any purported waiver by you of any rights conferred by this law is void and unenforceable.<sup>32</sup> That means that the requirements of the statute always apply.

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

\*\*\*\*\*

**Prepared by:** Richard A. Elbrecht, Supervising Attorney, and John C. Lamb, Staff Counsel, Legal Services Unit. Revised by Shela Barker, Staff Counsel, and Claire Yazigi, Staff Counsel. January 2010 revision by Anita Scuri, Supervising Senior Attorney.

**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 private attorney.**

This document may be copied if all of the following conditions are met: the meaning of the copied text is not changed; credit is given to the Department of Consumer Affairs; and all copies are distributed free of charge.

## ENDNOTES

---

<sup>1</sup> Civil Code §§ 1812.80-1812.97; Civil Code § 1812.82.

<sup>2</sup> Civil Code §1812.81.

<sup>3</sup> Civil Code §1812.82.

<sup>4</sup> Civil Code §§ 1812.86, 1812.83.

<sup>5</sup> Civil Code §§1812.84. See also Civil Code § 1812.83.

<sup>6</sup> Civil Code §1812.84(b).

<sup>7</sup> Civil Code § 1812.85(b)(2).

<sup>8</sup> Civil Code §1812.82.

<sup>9</sup> Civil Code §1812.85(a).

<sup>10</sup> Civil Code §1812.85(a).

<sup>11</sup> Civil Code §1812.85(b)(1).

<sup>12</sup> Civil Code §§1812.85(b)(1), (5).

<sup>13</sup> Civil Code §1812.85(d)(1).

<sup>14</sup> Civil Code §1812.85(d)(2).

<sup>15</sup> Civil Code §1812.85(d)(3).

<sup>16</sup> Civil Code §1812.85(b)(3).

<sup>17</sup> Civil Code §1812.85(c).

<sup>18</sup> Civil Code §1812.89(a).

<sup>19</sup> Civil Code §1812.89(b).

<sup>20</sup> Civil Code §1812.89(a)(3).

<sup>21</sup> Civil Code §§1812.89(a)(1), (2), (4).

<sup>22</sup> Civil Code §1812.89(b)(1).

<sup>23</sup> Civil Code §1812.89(b)(2).

<sup>24</sup> Civil Code §§1812.85(b)(3) and 1812.91.

<sup>25</sup> Civil Code § 1812.90.

<sup>26</sup> Civil Code §1812.92.

<sup>27</sup> Civil Code §1812.94(a).

<sup>28</sup> Civil Code §1812.94(b).

<sup>29</sup> Civil Code §§1812.87 and 1812.88.

<sup>30</sup> Civil Code §1812.88.

<sup>31</sup> Civil Code §1812.90.

<sup>32</sup> Civil Code §1812.93.