



# The Green Law Group, LLP

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## **Avoiding Pitfalls in Residential Pool Construction, What Contractors Need to Know**

In 1981 a California appellate court judge correctly observed that “consumer complaints . . . about swimming pool construction were proportionately higher than for other types of construction.”<sup>1</sup> In fact, consumer complaints against residential pool contractors were so common that the California legislature, with assistance from the State Contractors License Board, enacted provisions in the Business & Professions Code creating the strictest contract requirements in the construction industry for residential pool contracts. In enacting laws regulating residential pool contracts, the legislature proclaimed that “[a]ny contract, the primary purpose of which is the construction of a swimming pool, that does not substantially comply with paragraph (4) or (5) of subdivision (c) [written requirements for providing releases and change orders] or paragraph (7), (8), or (9) of subdivision (d) of Section 7159 [written requirements for project description, down payments and progress payments], shall be void and unenforceable by the contractor as contrary to public policy.”

<sup>1</sup> King v. Hinderstein (1981) 122 Cal.App.3d 430, 439-440, fn. 16.

Residential pool contractors are the only contractors in California whose contracts are legally “void and unenforceable” if they fail to comply with the requirements in the Business & Professions Code. However, in addition to voiding non-compliant contracts, Section 7168 of the Business and Professions Code provides that “[i]n any action between a person contracting for construction of a swimming pool and a swimming pool contractor arising out of a contract for swimming pool construction, the court shall award reasonable attorney’s fees to the prevailing party....” In a lawsuit between a homeowner and a non-compliant pool contractor, the homeowner is likely to win and also to recover their attorney’s fees against the contractor as the prevailing party.

Pool contractors who want to limit the risk of legal pitfalls, might consider the following:

1. Confirm that your C-53 license is active at all times during performance of work.
2. Use written contracts that comply with the Business and Professions Code.
3. Require property owners to sign your contracts before the start of construction.
4. Get change orders signed by property owners before work is performed.
5. Maintain workers’ compensation and general liability insurance on every project.
6. Only use licensed and insured subcontractors and safe workplace practices.
7. Use written subcontracts that incorporate the terms of the owner/direct contract.
8. Require owners to sign off on designs and specifications prior to construction.
9. Create a strong paper trail to support your position in the event of a dispute.
10. Use mediation provisions in your contracts to resolve disputes without litigation.
11. Use project management software to help maintain project schedules.
12. Provide outstanding performance and customer service.
13. Add to this checklist and share it with the decision makers in your business.



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If you have any questions or comments regarding this article, please do not hesitate to contact Scott Green at The Green Law Group, LLP.

*Please note that this article is only intended to provide some general educational information. For your particular legal questions, be sure and consult with an attorney.*

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