

Home Solicitation – Are There Rules?

By: Tyler A. Masterson, Associate Attorney

Nebraska is accustomed to high volumes of storms. These storms range from rain and damaging wind, to blizzards and blistering cold. Each of these storms, and the seasons they accompany, bring homeowners and residents a familiar and common result: door-to-door solicitation.

Many people can relate to the following scenario in the week or two following a Nebraska storm: A quiet Saturday afternoon in your living room, watching the Huskers dominate at Memorial Stadium, when a loud knock on the door somehow resonates over the sounds of the game. You open the door to find a person, complete with business card and clipboard, offering to give you a free quote to repair your roof after the last “big storm.” The salesperson says it will only take about ten minutes to complete your quote. Figuring it would be the quickest option to get back to the game, you say “sure, go ahead.” After all, it’s just a free bid, right?

After about ten minutes, the salesperson comes back to the front door, right before the end of the game, and shows you the clipboard. In an effort to get this salesperson off your doorstep so you can watch the end of the game, you sign the bid, take your copy, put it on the coffee table, and watch the finale. By the time the game is over, the bid is no longer on the top of your mind.

Later the following week, you get a phone call from the company that gave you the bid, wherein they say something to the effect of: “Thank you for agreeing to let us install your new roof. We would like to get you on the schedule, when would be a good time for you?” Certainly, this catches you off guard as you don’t remember telling the salesperson that they could install your roof – it was just a free quote! You tell the caller as much and they say: “well, we have a signed agreement from you saying that you authorize us to install your roof.” So, are you stuck? Maybe not.

Nebraska offers protection for some buyers under the Nebraska Home Solicitation Act (the “Act”).¹ A “Buyer” is defined broadly under the Act: “Buyer shall mean both actual and prospective purchasers or lessees of any goods or services offered through home solicitation selling.”² Thus, there is no requirement under this definition that you have to own the home to be considered the Buyer.

The term “Home Solicitation Sale” means: “a sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars or more, whether under a single or multiple contract, in which the seller or his or her representative personally solicits the sale, including those in response to or following the invitation

¹ See Neb. Rev. Stat. § 69-1601 et seq.

² Neb. Rev. Stat. § 69-1601(2).

by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller.”³

There are also several exceptions to the definition of “Home Solicitation Sale”. Briefly summarized, some of these exceptions include, but are not limited to: 1) sale as a result of prior negotiations at a retail business; 2) Buyer initiated the contact, for a personal emergency, and Buyer provides written waiver of cancellation; 3) sale conducted and consummated entirely by mail or phone; 4) Buyer initiated contact for maintenance or repair to the home; and 5) stock trading.⁴ Thus, not every transaction gives the Buyer an out. Nonetheless, a Buyer may cancel a home solicitation sale until midnight of the third business day after the seller has given applicable notice as detailed below.⁵

So, what are the Seller’s obligations? First and foremost, the seller is required to clearly and expressly disclose the seller’s individual name, the name of the business they represent, and the identity of the goods or services being offered for sale.⁶ Second, the Seller’s contract must contain a notice printed in bold font, not less than 10-point in size, with a conspicuous caption that reads: “BUYER’S RIGHT TO CANCEL” – with specific language indicating a Buyer’s rights.⁷ If the Seller does not include this notice, and until such notice is given, the Buyer may cancel the home solicitation sale by notifying the Seller in any manner and by any means of his intention to cancel⁸ and is not restricted to the 3-day cancellation rule.

Should you decide to cancel the agreement, the Seller is required to refund any money you paid, including a down-payment, within 10 days of the cancellation.⁹ However, once the agreement is cancelled, you have a duty to take reasonable care of the property in your possession for up to twenty days, so it can be returned to Seller.

Ultimately, Nebraska offers specific protection to buyers who are solicited with purchases at their place of residence. Not all sales and solicitations qualify, but if you fall within the Act’s criteria, you have protections that may stop the enforcement of an agreement – even those signed on gameday in Nebraska.

³ *Id.* at (1).

⁴ For complete list of exceptions, see Neb. Rev. Stat. § 69-1601(1)(a-g).

⁵ Neb. Rev. Stat. § 69-1603

⁶ Neb. Rev. Stat. § 69-1602

⁷ Neb. Rev. Stat. § 69-1604(1).

⁸ *Id.* at (5).

⁹ Neb. Rev. Stat. § 69-1605(1)

Disclaimer

If you have any questions about a specific agreement, please call my office at 402-934-9499 and schedule a consultation. This article should not be considered legal advice and you should consult an attorney regarding your specific situation.