



Legal Guide W-9

WHEN YOUR HEALTH CLUB CLOSES

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This Legal Guide identifies legal remedies available to you if your health club closes or changes ownership before the end of your health club services contract.

“My Health Club Closed ... What Can I Do Now?”

If your health club goes out of business, first consider the possibility that the owner may be attempting in good faith to find a buyer for the club who will honor the owner's contracts with the club's patrons. Try to contact the owner of the health club, or the owner of the building, to determine the current status of the club and its plans. If the new owner offers comparable equipment and services, it may be in your best interest to accept a proposed substitution, although you ordinarily will not be *obligated* to do so.

The owner of your health club may also own another facility nearby, and may invite you to transfer your membership to the other facility. If the location of the alternative facility is convenient to you, and it offers equipment and services comparable to those provided at the facility that has closed, it may be in your best interest to accept the alternative.

Sometimes the owner of a closed health club arranges with a competitor to allow the patrons of the closed club to transfer their memberships to the competitor's club, which may want the new patrons and the future income that will be received when the transferred patrons renew their contracts. If the alternative is reasonably comparable in location and offers adequate equipment and services, it may be in your best interest to accept the alternative. However, you ordinarily will be under no legal *obligation* to do so. If you accept an offer to transfer your membership to a different health club, you may lose your right to recover money damages from the club that closed. If the closed club is insolvent, you may not be able to recover any damages in any event.

If your health club closes and does not offer comparable services at a location that is equally convenient to you, this ordinarily will constitute a breach of the health club's contract with you. This means that you ordinarily will have a right to terminate your contract with that club, to stop making payments to that club and perhaps any financing agency to which you have been making payments, and to claim money damages from the club for the services for which you made payment but which you did not receive. If the club closed because it is insolvent and has no assets, however, you may not be able to actually recover any damages from the closed club.

How to Stop Payment Properly

If you have a legal right to terminate your membership, you should decide if you wish to terminate, and then *communicate* your decision to the health club. A simple letter will suffice, but be sure to keep a copy of the letter. It's always best to send the letter by certified mail and request a return receipt.

In your letter to the health club, in which you announce your decision to terminate your contract, you should state that you are terminating the contract, and you should state why you are doing so. If the contract requires you to make monthly payments, your letter also should express your decision to stop making payments.

If you have been paying a financing agency, you probably have the same right to stop making payments to the financing agency. Therefore, if your contract with the health club was assigned to a bank or other financing agency, your letter expressing your decision to terminate your contract should be sent to both the health club and the bank or other financing agency. Be sure that your letter also informs both of them that you are withholding future payments because the health club has closed.

If you took out a loan from a bank to pay for your membership, however, you probably will need to continue making payments to the bank, if the bank did not participate in your purchase of the health club membership. Similarly, if you charged your membership to a credit card, your subsequent decision to terminate your health club membership will not relieve you of your obligations to pay the issuer of the credit card. In either of these situations, it is as if you paid cash. (In that situation, you may have a legal right to recover a portion of the payment from the health club owners, although collection may be difficult.)

If your monthly payments are being made to the health club or financing agency by a pre-authorized electronic funds transfer from your bank (either checking account or credit card account), you should also notify your bank that you want the automatic payments to the health club stopped. You may stop future pre-authorized transfers at any time by notifying the bank (or other electronic payment service) at least three business days before the scheduled date of the next transfer.¹ Since this right cannot be waived,² it is a right that you may exercise without regard to the terms of any contract that you may have entered into with the health club. Your bank may not lawfully refuse to terminate automatic transfers on the basis that you have entered into an agreement with some third party for electronic payments. If your bank refuses to honor your request to stop payments, it is important that you register a formal complaint with the federal or state agency that regulates it.

If your stop payment notice is given orally, the bank or other electronic payment service to which you give the oral notice may require that you provide written confirmation of your stop payment instruction within 14 days of your oral notification. A bank or electronic payment service can require a written confirmation only if it informs you of that requirement, and the address where you must send the written notification, at the time you give the oral notification.³

If the bank or other electronic payment service requires written confirmation of a stop payment instruction, your oral stop-payment instruction is no longer binding 14 days after it has been made.⁴ At that point, your previously authorized automatic transfers will resume. It is important, therefore, that you provide a timely written confirmation of a stop payment order if

one is requested. (For more information, see “Consumer Rights in Electronic Fund Transfers,” Legal Guide CR-6.)

If you have stopped making payments because the club has closed, and a debt collection agency makes a demand for payment (whether as a collection agency for the original owner of the club, a purchaser of the club, or a financing agency), it is important that you write the collection agency or other person a letter explaining why you have stopped making payments, and requesting that it immediately stop collection efforts. Under federal law it is *required* to stop collection efforts, once you have made a request to stop.⁵

Upon receipt of your notice of a dispute or refusal to pay, the collection agency attempting to collect payment must also notify any credit-reporting agency to which it reported negative information that you have registered a dispute. The collection agency must then reinvestigate the matter and determine whether your credit record should be modified to reflect that the debt is disputed.⁶

If you have paid anything in advance -- either the full amount for an agreed period or a down payment or membership fee -- your letter to the health club should also include a request for a pro-rata refund. For instance:

- If you have paid \$300 for three years of services and the club closes after the first year, you can claim as your refund 2/3 of \$300, or \$200, for the services that you didn't receive.
- If you paid \$100 as a down payment fee on a three-year contract, and you also paid in advance an additional \$20 per month, the total cost of your three-year contract will be the \$100 down payment plus \$720 in monthly payments for a total of \$820. If the club closes at the end of the second year, you can claim as your refund 1/3 of \$820 or \$273.
- If your contract just called for installment payments of \$25 per month during the entire three-year period, or if your payments were on a month-to-month basis and you could cancel your contract at any time without cause, you could stop payments, but you probably wouldn't be entitled to any refund.
- If you also paid a membership or initiation fee, your right to receive a refund of the membership fee may depend upon your original agreement with the health club. If your agreement entitles you to a refund of the membership fee when you terminate your relationship with the health club, you certainly should have the right to recover the membership fee if the club should close. In other situations, your right to recover the membership fee is legally unclear. If the health club opened just recently, or if the health club services contract was for a term of several months or years rather than month-to-month, the courts could award you a pro-rata refund because of the health club's breach of the contract.

Additional grounds for canceling a health studio contract (*e.g.*, fraud) may be present in your situation. (See “Overview of California’s Health Studio Services Contract Law,” Legal Guide W-10.)

“What If the Health Club Is Sold to a New Owner?”

If your club does not close, but is sold to a new owner, and the new owner refuses to honor your contract with the original owner, you have a claim against the original owner for breach of contract. You can enforce this claim, if necessary, by suing the original owner in small claims court. If you sue the original owner, it's important to use the original owner's current legal name or names. If there are multiple owners, it's important to name all of the owners by their current legal names.

Often, however, you may not be able to locate the previous owner, or he or she may be insolvent (may have no money or assets to repay you). You probably can file a suit in small claims court (if the amount involved is \$10,000 or less), but if you cannot locate the previous owner, you will not be able to effect service of the summons and complaint on that person (that is, officially notify that person of your suit). And even if you succeed in serving the previous owner with your complaint, it may be difficult or impossible for you to enforce the judgment if the previous owner is insolvent.

If the owner of your health club files bankruptcy, you can file a claim with the bankruptcy court. If assets are available to pay general creditors (which is generally *not* the case), you may receive a partial refund of the payments you made for services not rendered. You may obtain a proof of claim form from the bankruptcy court clerk's office. Since most bankruptcies do not result in payments to unsecured creditors like you, check with the bankruptcy court clerk before filing a claim.

If your health club closes, and the new club that opens on the same premises refuses to honor the terms of the contract you made with the previous health club owner, you may need to obtain more information about the business transfer to determine your rights, if any, against the previous owner. If the new owner did not purchase the health club from the previous owner, but merely made arrangements to assume the leases of the premises and equipment, the new owner is not required to honor the contract you had with the previous owner. Your only recourse in that case would be to try to persuade the previous owner to reimburse you, or sue the previous owner for breach of contract.

If the new owner has *purchased* the club from the previous owner, it's possible, however, that the new owner may be legally required to honor your contract with the previous owner. Since there is no law directly governing this situation, you probably will need an attorney to advise you. You also may need an attorney to gather the evidence needed to prove your claim, and to present the evidence and your arguments at trial.

Can the new owner of the club *require* you to continue as a member? The answer will depend on the particular situation. If the new owner does not eliminate or substantially reduce the scope of the facilities described in the contract, it's probable that your relation (and obligations) to the new owner will be the same as your relation to the previous owner. However, if the scope of the new owner's facilities is substantially different than those provided by the previous owner, or if they are offered at a different location or under materially different terms, you have no obligation to continue as a member⁷. In that event, you can obtain a pro-rata refund of the unused part of the amount you prepaid, or can stop making monthly payments to new owner or finance company. If you obtained a loan to pay the club, you probably must continue making payments to the lender.

For more information, see Legal Guide W-10, “Overview of California’s Health Studio Services Contract Law.”

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ENDNOTES

^{1.} 15 USC § 1693e(a) and 12 CFR § 205.10(c).

^{2.} 15 USC § 1693l. See footnote 3.

^{3.} 12 CFR § 205.10(c)(2).

^{4.} 12 CFR § 205.10(c)(2).

^{5.} 15 USC § 1692c(c)(1)-(3), (d).

^{6.} 15 USC §§ 1681s-2(a)(3), (b).

^{7.} Civil Code § 1812.85(c).