

REALTORS® must know “Do-Not-Call” Registry rules

Despite some lingering legal battles, it is very apparent that Federal “No Call” regulations are effective now and will supersede any less stringent State laws. The cold-calling activities of REALTORS® need to comply with the requirements of the new National ‘Do-Not-Call’ Registry. The following are some of the most common questions REALTORS® have regarding the new requirements.

Q: Why does the rule apply to REALTORS®?

A: The new rule makes it illegal to call a residential telephone number with a “telephone solicitation” if the number has been registered on the National ‘Do-Not-Call’ Registry. A “telephone solicitation” is defined as “a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services which is transmitted to any person. Because a REALTOR® who makes cold-calls is trying to sell their real estate services those calls would fall under this definition.

Q: What new requirements are placed on REALTORS® who do cold-calling?

A: Under the rules telemarketers must obtain a new ‘Do-Not-Call’ Registry list every three months and compare their call list against the numbers on the ‘Do-Not-Call’ list to avoid making unsolicited calls to numbers on the registry.

Q: Are there any exception to the rules prohibiting telephone solicitations to buyers or sellers whose telephone number is on the National ‘Do-Not-Call’ Registry?

A: Yes. Even if their number is on the registry, you can still make calls to the following:

- Consumers with whom you have a personal relationship;

- Consumers that have given you prior written consent to call;

- Consumers that have an “established business relationship” with you. This would include your current clients and customers and extends for up to 18 months after the end of the transaction. This also includes a consumer who, within the last three months, has made an inquiry to your business. An exception would terminate if the consumer asks that you not call them anymore.

- Business to business calls;

- E-mail and direct mail communications are not affected by the ‘Do-Not-Call’ regulations.

Q: Can I obtain written permission from my clients to call them after our agency relationship terminates, so that I am not subject to the 18 month limitation?

A: Yes. However, to fall within the prior written consent exception it must be made clear to the consumer what authorization they are providing. The authorization for you to call must be clear and conspicuous and must include the consumer’s phone number and signature.

Q: Do I have to check the ‘Do-Not-Call’ Registry before I call FSBOs or sellers with expired listings to solicit them to list with me?

A: Yes. A REALTOR® would be prohibited from initiating a phone call to solicit a listing from a FSBO or seller with an expired listing who is on the ‘Do-Not-Call’ Registry.

Q: If I represent a buyer who is interested in a FSBO property do I need to check the ‘Do-Not-Call’ Registry before I call the seller about the property?

A: If you are only calling on behalf of your buyer client who is interested in the property and not in anyway soliciting the listing, this call would not qualify as a “telephone solicitation” and therefore would not be subject to the ‘Do-Not-Call’ requirements.

Q: How do you obtain the ‘Do-Not-Call’ list and how much does it cost?

A: Starting October 10, 2003, a telemarketer can obtain access to the list by registering on the FTC’s website at www.telemarketing.donotcall.gov. The list is sorted by area code and the telemarketer can choose the area codes they want. Five area codes will be provided at no charge and additional ones will cost \$25.00 per area code, up to a maximum annual fee of \$7,375 for the entire list. These charges will give the telemarketer access to the area codes for one year. The telemarketer will need to renew its subscription to the registry, including paying additional fees if they receive access to more than five area codes.

Q: Who enforces the ‘Do-Not-Call’ Registry regulations and what are the penalties for non-compliance?

A: The FCC and FTC enforce the ‘Do-Not-Call’ regulations. Telemarketers can be assessed a civil penalty up to \$11,000 per violation, as well as injunctive remedies. The FCC also provides for private right of action for injured consumers. The North Dakota Attorney General also may enforce the ‘Do-Not-Call’ state law if the latter is equal to federal regulation.

Q: Are the Brokers liable for their agents’ compliance?

A: Yes. It is important that every Broker has written procedures in every office that details compliance with the ‘Do-Not-Call’ requirements. Brokers must train all agents and employees on these procedures as well as monitor and enforce compliance. Brokers may not “contract away” this liability.

Safe Harbor The safe harbor provision can help protect a business from lawsuits seeking to enforce violations of the Registry for phone calls made to numbers listed in the Registry. In order to take advantage of the safe harbor provisions, companies will need to demonstrate as a matter of "routine business practice," they have instituted the following:

A. Written procedures The company will need to show that it has a written policy describing the company's plan for complying with the Registry. Since each company's plan will be unique, each company will need to determine how it is going to comply with the Rules and then write their own company's plan. The company's policy should expressly state that the company complies with the FCC and FTC's federal telemarketing rules and the company accesses the Registry. The company will also need to show that it has implemented such a plan and that it has a process for monitoring compliance with the Rules. The plan should describe how the company will create its cold-calling lists.

Included in this description should be a summary of how the company accesses the Registry and uses the Registry information to check numbers on its list. The policy should also describe how the list will be kept current by the company by checking the Registry at least every three months. Also, the policy should describe how the list is checked against the company-specific do-not-call list every thirty days. Next, the plan should provide detailed information to the telephone solicitors on how to conduct their calling activities. The policy should provide guidance on the following: time when calls can be made (safest times: 10 am- 8 pm, Monday-Saturday); what the telemarketer needs to say during every call (name, company name, and have contact information available); and also set forth guidelines on what is unacceptable conduct during a call (examples: repeatedly calling the same number; allowing phone to ring numerous times; abusive tactics such as threats or obscene language; or hanging up when consumer begins to request placement on company's do-not-call list). The policy should describe what representatives of the company should do when they receive requests from consumers requesting the placement of their numbers on the company-specific do-not-call list. The company specific do-not-call list is a list of numbers where consumers have made specific requests to representatives to not receive calls from the company. Such a request overrides any exception (such as an established business relationship) that would otherwise allow the business to call the consumer. These lists must be updated every 30 days, and a consumer's request to a business is good for five years from the date is made. The policy should describe how the representatives need to record this information (creation of a standard form is recommended) and to whom the representative will give this information (i.e., individual responsible for maintaining the company specific list).

B. Training of Personnel The company will need to show that it has trained its representatives on its written policy for complying with the Rules. Following training, a company might want to have its representatives sign an acknowledgement form or a sign-in sheet so the company can demonstrate at a later date that its representatives participated in a training session. **C. Recording** The company will also need to show that

it maintains a list of telephone numbers that its representatives cannot contact.

D. Accessing the Registry The company will need to demonstrate that it is accessing the Registry in a manner that causes it to update its list at least every three months. The company also needs to show that it has in place a process to prevent telephone solicitations to numbers found in the Registry. Finally, the company will also need to maintain records documenting its accessing the Registry. **E. Purchasing the Registry** The final step is that the company needs to show that its download of the list is only for its own compliance purposes and that it does not "sell, rent, lease, purchase or use" the list for any purpose except compliance purposes. The company will also need to show that it purchases access from the administrator of the Registry and it does not share the costs of accessing the Registry with any other telemarketers.

Q: Does the Broker need his or her firm registered with the Federal registry?

A: You should if you expect that you or any of your agents or employees will make a telephone solicitation – cold call – for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services which is transmitted to any person who may have registered themselves on the state or federal ‘Do-Not-Call’ Registry.

Source: NAR and Ohio Association of REALTORS®

Accessing the “Do-Not-Call” Registry

Below is a brief overview of the registration process for the new “Do-Not-Call” Registry created by the federal government. The Registry will contain the telephone numbers of consumers who, by registering their telephone number(s), have made it illegal for callers making a “telephone solicitation” to call them. A “telephone solicitation” is defined as “a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services which is transmitted to any person” and covers the cold-calling activities of a real estate professional.

The Registration Process

The Registry is available at <https://telemarketing.donotcall.gov/>.

Once you have reached the Registry home page, the next step is to begin the registration process by creating a profile for your company or organization (registration link is at the bottom of the page).

There are two ways to register your organization. First, you can register your own organization (registering in this manner will not limit your ability to later allow another entity to conduct telemarketing on your behalf). Second, you can have a third party register your organization.

After you have determined how you would like to register your organization, you will create a profile for your organization. In creating the “Profile,” you will need all of the contact information for the organization as well as its Employer Identification number or, if no such number exists, the owner/proprietor’s own Social Security number. The party completing the registration will then need to provide information for the organization’s “Authorized Representative.”

The Authorized Representative controls the organization’s access to the Registry. The “Authorized Representative” selects the area codes which the organization will download. The Authorized Representative must provide an email address as well as an email address for the “Downloader.” The Downloader is the person who will be responsible for downloading the selected area codes. The Authorized Representative and the Downloader can be the same person, and the email addresses can be the same. The Downloader password could also be shared by more than one employee of the organization. Once you have submitted this information, an email will be sent to both addresses, which needs to be clicked for confirmation by both recipients.

Following your submission for your organization's registration information, you will receive your organization's ID as well as the Authorized Representative's password and the Downloader's password. You will want to store these in a secure location, as this information is needed to access the Registry. To change the password(s), click the "Review/Update Profile" button. Only the Authorized Representative can change the passwords.