

LEGAL FOUNDATION

Telephone Consumer Protection Act of 1991

Pursuant to its authority under the Telephone Consumer Protection Act (TCPA), the Federal Communication Commission (FCC) established, together with the Federal Trade Commission (FTC), a national Do-Not-Call Registry. The FCC regulations state that those who engage in "any telephone solicitation to a residential telephone subscriber" must have a "written policy, available upon demand, for maintaining a do not call list" - *i.e.*, a company-specific do-not-call policy, not necessarily a policy for complying with the federal Do-Not-Call Registry (although policy could include this information as well). *If a business is engaged in any telemarketing, it must have a "do not call" policy that must be made available to those who request a copy, even if the business has never contacted the consumer.*

Consumer Do-Not-Call Lawsuits Increase

NFIB has become aware of an individual threatening to bring claims against small businesses, including real estate brokerages, for violating the federal "do not call" laws. The caller's method works in the following way. First, he contacts the business and asks that his phone number be placed on the company's internal "do not call" list. He also requests that the business mail him a copy of the company's policy for maintaining its internal "do not call" list within five days. If the caller does not receive the "do not call policy" within five days, he will threaten to file a lawsuit against the business in state court. To avoid the lawsuit, the caller offers the business the opportunity to settle the matter for around \$5,000.

Steps to Avoid Consumer Lawsuits

To avoid consumer lawsuits like the situation described above, small businesses that engage in telephone solicitation should do the following:

- have a written do-not-call policy available upon request [a model policy follows below];
- educate its salespeople to respond to these requests by promptly transmitting the policy to the requesters; and
- document the transmission of the policy to the requester.

As far as time frame for complying with the caller's demand for a copy of the policy, the only existing guidance from the FCC states that the business must send its policy in response to a request within a "reasonable amount of time following the consumer's request". In addition, FCC rules give a company thirty days to add a consumer's name to the company's do not call list.

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So while the caller's demand for a five-day turnaround is likely to be found unreasonable, the faster you send the policy in response to a request, the better your chances may be of avoiding a lawsuit.

NFIB would like to thank the National Association of Realtors (NAR) for allowing NFIB to share NAR's model policy with NFIB members.

Model Do-Not-Call Policy*

If you do not want to receive sales calls from [insert COMPANY NAME], you can ask us to place your telephone number on [insert COMPANY NAME]'s "Do Not Call" list. In compliance with federal and state laws, your request will be documented immediately. Please allow up to 30 days for your telephone number to be removed from any sales programs that are currently underway.

- Your request can be in writing or by phone, and must include, at a minimum, your telephone number.
- If you have multiple telephone numbers, tell us all numbers that you want to be included.
- You will remain on our "Do Not Call" list for five years, unless you ask to be removed.
- If your telephone number ever changes, you must give us your new information for your "do not call" status to remain in effect.

Many "do not call" regulations permit companies to contact their own customers even though your number(s) are on these other "do not call" lists. Therefore, if you are a [insert COMPANY NAME] customer, you may be contacted by [insert COMPANY NAME] even though you are on these other "do not call" lists. If you do not want to be contacted by [insert COMPANY NAME] even though you are a customer, simply follow the steps above to be placed on [insert COMPANY NAME]'s "Do Not Call" list and your request will be honored.

Being on [insert COMPANY NAME]'s "Do Not Call" list means that you will not receive sales calls by anybody representing [insert COMPANY NAME]. We may still contact you, however, for non-solicitation purposes.

***Please note this policy is only provided for guidance purposes and is not intended to serve as legal advice. Be sure to consult your attorney when creating your company Do-Not-Call policy.**