



**Pennsylvania Association of
REALTORS®**
The Voice for Real Estate® in Pennsylvania

Federal Do Not Call Regulations



When did it happen?

- PA Telemarketer Registration Act amended to add Do Not Call provisions in April, 2002.
- Federal Trade Commission (FTC) regulations covering interstate (state-to-state) calls released in December, 2002.
- Federal Communications Commission (FCC) regulations covering both interstate and intrastate calls published July 25, 2003
- Various federal updates periodically thereafter



What are the primary restrictions?

- Can't make telemarketing calls to individuals registered on the FTC (and PA) Do Not Call lists
- No telemarketing before 8 am or after 9 pm
- Must maintain company-specific (internal) Do Not Call list
- Identify individual caller, company on whose behalf the call is made, and give a number where the consumer can call to be added to a company-specific Do Not Call list



What are the primary restrictions?

- Must have written policies and procedures for employees and staff
- Train employees and staff on those policies and procedures
- Register for FTC Do Not Call list and access it for download at least once every 31 days; access update PA list at least once every calendar quarter.



Controlling Authority

- Should I follow State law or Federal Regulations?
- Whichever is more restrictive will control
- Must know BOTH sets of rules
- Could change if PA law changes





Telemarketer / Telemarketing

Pennsylvania

- “plan, program or campaign...”

FCC

- A “person or entity that initiates a telephone call or message...”





Exceptions – Personal Relationship

Pennsylvania

- No “personal relationship” exception



FCC

- Seller may call consumers with whom the caller has a “personal relationship” (family member, friend or acquaintance)



Allowing calls when on Do Not Call List

Pennsylvania

- Telemarketer may call is response to an “express request” by consumer

FCC

- Consumer on Do Not Call list must give written permission to receive calls from a particular telemarketer





Exceptions – Existing debt, etc.

Pennsylvania

- Calls made “in reference to an existing debt, contract, payment or performance”

FCC

- No stated exception, BUT this type of call can usually be made under the EBR exception



“Established Business Relationship” (EBR)

Pennsylvania

- Extends 12 months after purchase or transaction



FCC

- Extends 18 months after purchase or transaction



“Established Business Relationship” (EBR)

Pennsylvania

- Extends for 3 months after an inquiry or application, if caller gets consent
- *May now have to be written?*



FCC

- Extends for 3 months after an inquiry or application. *No explicit consent needed.*



“Established Business Relationship” (EBR)

Pennsylvania

- No specific right to “terminate” EBR with relation to telemarketing

FCC

- Even with an EBR, consumer may ask to be placed on company-specific Do Not Call List, and further calls are prohibited





Cellular Telephones

Pennsylvania

- Explicitly included cell phones in Sept. 2003



FCC

- May register cell phones





Caller ID

Pennsylvania

- May not block your number from caller ID

FCC

- Must transmit caller ID info where technologically possible





Affiliated companies

Pennsylvania

- No discussion of affiliated companies. Presume only applies to the specific company of which the request is made.

FCC

- Request to be added to company Do Not Call List applies to affiliated companies if consumer “reasonably would expect” it to.

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Sharing of Do Not Call information

Pennsylvania

- No specific provision – presume that a request to be added to a company Do Not Call list may not be shared

FCC

- Request to be added to a company Do Not Call list may not be shared with anyone other than an affiliated company





Faxing

Pennsylvania

- No prohibitions

FCC

- May only fax “advertisements” with permission of recipient – an Existing Business Relationship is OK to show permission.





Faxing

- Still can't send blast faxes without EBR or permission *as it was before the regs were changed*



Company-specific Do Not Call lists

- EVERY company must keep it's own internal Do Not Call list
- Any consumer asking that you no longer call must be placed on your internal list within 30 days of the request
- Applies to ALL consumers, even if another exception applies (e.g., EBR), and even if it is a consumer you wouldn't normally call.



Company-specific Do Not Call lists

- NOTE: Because you are required to honor requests to be placed on internal lists within 30 days, you must design your internal policy to be sure that you are updating this information at least monthly, even if your Federal list is only updated every 90 days.
 - CHECK WITH YOUR ATTORNEY OR COMPLIANCE PROVIDER FOR SPECIFICS TO ACCOMPLISH THIS



What about FSBOs and expireds?

- Can call FSBO if and only if you represent a legitimate buyer – can't call to secure listing
- Can't call expired listing unless it is *yours* (being an MLS member doesn't mean you have an EBR with anyone whose property is listed in the MLS)



“Information only” calls

- If you are calling only to provide information or to do a legitimate poll, you’re OK.
- BUT BE CAREFUL!
- For example, calling once every two weeks with prices on sold listings may technically be “informational only,” but it is pretty clearly intended to gain customers and/or referrals



List? What List?

- Currently, telemarketers are currently required to subscribe to **both** PA and Federal Do Not Call lists
- If/when numbers on PA list turned over to FTC, should be sufficient to use FTC list



Do I really need to subscribe?

- YES! (Assuming that you make telemarketing calls designed to)
- Failure to register for list access is a violation, even if you never make a call to someone who is on the list.



How do I get The List?

- Go to FTC Web site for link, or to <http://telemarketing.donotcall.gov>
- Fill out Profile for yourself or your brokerage
- Register for access
- Pick your area codes
 - \$62/area code per year, with first 5 free
 - Still need to use PA list until legislature allows Federal list to be the single master list



Downloading

- Get ONLY phone number (no name/address)
- Multiple download formats (plain text and 'tagged' XML files)
- Can download full list each time, or download full list once, then a change file afterwards
- Can check phone numbers online on FCC site (up to 10 at a time) without doing a download.



Downloading

- Download is done in a zipped file to make it faster, so need Zip utility (PK Zip or WinZip are popular – links on PAR Web site)
- Like PA list, you'll need a specialized viewer application for easy use; list is very long.
 - For example, 215 area code contains over 230,000 listings as of Sept. 7, 2003.



Penalties

- PA law: Up to \$1,000 per violation
 - Triple damages if consumer is over 60
- FCC: Up to \$500 fine per violation
 - Separate “forfeiture” action can result in penalties of up to \$11,000 per violation
 - Seriously, \$11,000 -- that isn't a typo



Resources

PAR Web page

- www.parealtor.org
- PAR staff assistance
 - donotcall@parealtor.org
- PAR Legal Hotline
 - 1-800-727-5345 (9-10 am & 1-3 pm)
- NAR Web page
 - www.realtor.org