



TO: Managing General Agents, Associate General Agents, Independent Advisors and Select National Accounts

SUBJECT: National Do Not Call List (National DNCL)

On September 30, 2008, the Canadian Radio-television and Telecommunications Commission (CRTC) is introducing new and revised unsolicited telecommunications rules and the National Do Not Call List.

What is the National Do Not Call List (National DNCL)?

The National Do Not Call List (National DNCL) is a nationwide registry that will assist individuals in preventing unwanted telemarketing calls. Individuals can register a landline, a cell phone or fax machine on the National DNCL. The National DNCL will be administered by Bell Canada, the appointed National DNCL Operator. They also will receive any complaints and make the initial assessment before forwarding them to the CRTC for further investigation. When a number is registered on the National DNCL, a telemarketer is not allowed to call that number for the purposes of telemarketing.

Who is a Telemarketer?

The CRTC Unsolicited Telecommunications Rules define a telemarketer as “a person who conducts telemarketing either on their own behalf or on behalf of one or more other persons.” They define telemarketing as “the use of telecommunication technologies to make unsolicited telecommunications for the purpose of solicitation.”

These definitions mean that most businesses, including advisors, are considered telemarketers. By selling or promoting a product or service, even to existing clients, you may be engaged in telemarketing.

Exemptions

There are exemptions to the Rules, for entities such as registered charities, political parties for elections and campaigns, surveyors or solicitations for subscriptions to newspapers. Calling a business in order to telemarket to that business is also exempt.

There is also an exemption for existing business relationships. This is defined as a business relationship that has been formed by a voluntary two-way communication between the person calling and the person to whom the call is made in certain circumstances. These circumstances are:

- the client has purchased products or services within 18 months of the call;
- the client has made an inquiry or application within 6 months of the call;
- the client has an existing written contract with the caller; or
- the client had a contract with the caller that expired within 18 months of the call.

However, if the client has specifically requested that you do not call them, you must record their name and number on your own DNCL and refrain from calling them. Express consent is required in order to contact them in the future. This applies even for calls that would otherwise be exempt from the Rules.

Personal referrals are not exempt. Before calling a potential client with a telemarketing call, it is necessary to obtain express consent from that potential client if they are on the National DNCL.

Express Consent

Express consent is required prior to calling a client who is registered on the National DNCL list. It must include a statement confirming the client consents to being called by telephone and, if possible, the number to which the telemarketing call can be placed.

Examples of acceptable forms of express consent are:

- written consent, including a completed application from the client;
- oral consent, if verified by an independent third party or if audio recording is retained; or
- electronic consent through a toll-free number or the internet.

What does a telemarketer have to do?

Subscription to the National DNCL is mandatory by law for every organisation engaged in telemarketing. Registration and the purchase of a subscription must occur before a telemarketing telecommunication is initiated.

To subscribe, go to <http://www.LNNT-EDNCL.gc.ca> and register your information. The subscription models are flexible and fees will depend on the specifics you choose.

A telemarketer must also maintain its own Do Not Call List, even if he/she is making exempt calls. Under the Rules, you are obligated to respect a consumer's wishes and maintain your own DNCL.

Independent advisors selling an insurer's products must not represent themselves as calling on behalf of that insurer. As independent advisors, solicitation calls you make are on your own behalf.

A telemarketer must maintain records to demonstrate proof of registration to the National DNCL and proof of payment of fees to the National DNCL operator for a period of three years. While you are not required to keep any additional records, you may want to keep further information in the event of a complaint or a Notice of Violation. Many items you are already keeping for other reasons will help you with this.

What is the penalty for non-compliance?

If a client who has registered on the National DNCL list receives a call, he/she has 14 days in which to file a complaint. After investigation, the CRTC has the authority to issue a Notice of Violation and charge administrative penalties of up to \$1,500 to individuals or up to \$15,000 for corporations. Corporate brokers should note that they will be considered a corporation when being charged with a penalty, regardless of the size of the company.

This circular is to provide you with an overview of the National Do Not Call List and the Telecommunications Act. To ensure you fully understand your obligations under this new law, please go to www.crtc.gc.ca for a complete copy of the Act and related decisions.

Reference: Lisa Lawlor, Manager, Field Operations & Compliance