

Douglas S. Tingvall

Attorney at Law
12015 93rd PL NE
Kirkland, WA 98034-2701
425-821-2701/Fax 896-0390
DougTingvall@RE-LAW.com



DO-NOT-CALL RULES FOR REAL ESTATE AGENTS

General Rule: As of October 1, 2003, real estate agents and other businesses are generally prohibited by FCC rules from calling any consumer whose number is listed on the national “do-not-call” registry or the broker’s company-specific “do-not-call” list. However, agents may call a consumer with whom the agent has a personal relationship or an established business relationship, provided the consumer has not asked to be placed on the broker’s do-not-call list. Agents may also call a consumer with the consumer’s written permission. Violators are subject to civil penalties of up to \$11,000 per violation, as well as injunctive remedies.

Question: How can consumers register their phone numbers on the National Registry?

Answer: Consumers can place their telephone numbers on the National Registry by making a toll-free telephone call or via the Internet. Consumer registrations are valid for five years, or until the consumer asks to be taken off the National Registry or the number is disconnected. Only telephone numbers are included in the National Registry. Consumers may register both their residential “land line” telephone numbers and their wireless telephone numbers.

Question: What kinds of calls are prohibited under the rules?

Answer: The do-not-call rules cover “any plan, program, or campaign to sell goods or services” involving phone calls.

Question: Can I call consumers with their permission?

Answer: You may call any consumer who gives his or her express agreement to receive calls, even if the consumer’s number is in the National Registry. The consumer must give express agreement in writing to receive calls placed by – or on behalf of – the seller, including the number to which calls may be made, and the consumer’s signature. The signature may be a valid electronic signature, if the agreement is reached online.

If an agent seeks a consumer’s permission to call, the request must be clear and conspicuous, and the consumer’s assent must be affirmative. If the request is made in writing, it cannot not be hidden; printed in small, pale, or non-contrasting type; hidden on the back or bottom of the document; or buried in unrelated information where a person would not expect to find such a request. A consumer must provide consent affirmatively, such as by checking a box. For example, a consumer responding to an email request for permission to call would not be deemed to have provided such permission if the “Please call me” button was pre-checked as a default.

Question: To whom does the personal relationship exemption apply?

Answer: You may call family, friends and acquaintances, even if they are listed on the National Registry. However, if they are on your broker’s do-not-call list, you may not call them to solicit business.

Question: What are the requirements for the “established business relationship” exemption from the do-not-call rules?

Answer: You may call a consumer with whom you have an established business relationship, provided the consumer has not asked to be on the broker’s entity-specific do-not-call list. There are two kinds of established business relationships:

- (a) One is based on the client’s purchase, sale, lease, or rental through the agent, or other financial transaction between the client and agent, within the preceding 18 months.

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(b) The other is based on a consumer's inquiry regarding the agent's listings or services, within the preceding three months, which enables agents to return calls to interested prospects even if their telephone numbers are on the National Registry.

Question: To whom does the established business relationship exemption apply?

Answer: An established business relationship is between an agent and a client or customer; it is not necessarily between one of the broker's subsidiaries or affiliates and that client or customer. The test for whether a subsidiary or affiliate can claim an established business relationship with a sister company's client or customer is: would the customer expect to receive a call from such an entity or would the customer feel such a call is inconsistent with having placed his or her number on the National Do Not Call Registry.

Factors to be considered in this analysis include the nature and type of goods or services offered and the identity of the affiliate. Are the affiliate's goods or services similar to the broker's? Is the affiliate's name identical or similar to the broker's? The greater the similarity between the nature and type of goods sold by the broker and any subsidiary or affiliate and the greater the similarity in identity between the broker and any subsidiary and affiliate, the more likely it is that the call would fall within the established business relationship exemption.

Question: May I call a prospect with whom I have an "established business relationship" if they are listed on my broker's do-not-call list?

Answer: If a consumer asks a broker not to call, none of that broker's agents may call them, even if you have an established business relationship.

Question: May I call a prospect listed on my broker's do-not-call list, but not listed on the National Registry?

Answer: An agent may not call a consumer on the broker's do-not-call list, regardless of whether the consumer's number is on the National Registry.

Question: Can I call a For Sale by Owner [FSBO] or seller of an expired listing with another broker?

Answer: The do-not-call rules do not specifically cover these situations. Probably, you may call a FSBO or seller of an expired listing only on behalf of buyers you represent to obtain information about the property, show the property to the buyers or present an offer, but not to solicit a listing.

Question: Is a telephone survey covered by the do-not-call rules?

Answer: Callers purporting to take a "survey," but also offering to sell goods or services, must comply with the do-not-call rules. But if the call is for the *sole* purpose of conducting a survey, it is exempt.

Question: What hours may I call a client or customer?

Answer: Unless you have a person's prior consent to do otherwise, you may not call a person's home outside the hours of 8 a.m. and 9 p.m.

Question: Am I required to transmit Caller ID information when making prospecting calls?

Answer: Effective January 29, 2004, you must transmit or cause to be transmitted your telephone number, and, when available by your telephone company, your name to any consumer's caller identification service.

Question: How often do I have to access the National Registry and remove numbers from my calling lists?

Answer: You must synchronize your list with an updated version of the National Registry at least every three months. Your broker may download and provide access to the National Registry.

Question: Can I check just a few numbers at a time to see if they are registered?

Answer: Companies that have provided the required identification information and certification and paid the appropriate fee (if they want to access more than five area codes) are allowed to check a small number of telephone numbers (10 or fewer) at a time via interactive Internet pages. This permits small

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volume callers to comply with the do-not-call rules without having to download a potentially large list of all registered telephone numbers within a particular area code.

Question: How much does it cost to access the National Registry?

Answer: Data for up to five area codes are available for free. Beyond that, there is an annual fee of \$25 per area code of data.

Question: What's my liability if I inadvertently call a number on the National Registry?

Answer: The do-not-call rules contain a "safe harbor" for inadvertent mistakes. If you can show that, as part of its routine business practice, you meet all the requirements of the safe harbor, you will not be subject to civil penalties or sanctions for mistakenly calling a consumer who has asked for no more calls, or for calling a person on the National Registry.

Question: How do the FCC do-not-call rules relate to state laws?

Answer: The FCC do-not-call rules preempt state laws.

Question: Where can I get more information?

Answer: Go to the FCC's web site at <http://www.fcc.gov/cgb/donotcall/>.

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