NAR Issue Summaries

Technologies / Telemarketing/Cold-calling

NAR Committee:

Federal Technology Policy Committee

What is the fundamental issue?

Two federal agencies, the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC), regulate interstate and intrastate telemarketing. In December 2002, the FTC issued regulations that created a national “Do-Not-Call” registry for consumers who choose not to received interstate solicitation calls. The FTC rules were then followed by Federal Communication Commission rules issued on June 26, 2003 that imposed similar rules on intrastate phone solititations. Authorized by earlier legislation giving both agencies authority to regulate telemarketers, both rules arose out a desire to eliminate telemarketing abuses that earlier agency guidance had failed to curtail. Annual fees for access to the registry's database for compliance purposes are charged to firms that chose to telemarket; these fees are determined annually and are tied to an inflation index.

I am a real estate professional. What does this mean for my business?

Calls made by Realtors to potential home buyers and sellers are subject to both the FTC and FCC telemarketing regulations. As a result, Realtors who make cold calls to consumers with whom they have not done business in the past must comply with all of the Do-Not-Call (DNC) rules. These rules include, but are not restricted to, requirements that those who are making consumer calls register as a telemarketer, check the DNC Registry before making calls to consumers and do not make calls to those consumers listed on the Registry or who have asked not be be called by the caller in the past.

NAR Policy:

NAR opposed the preemption of state telemarketing laws and strongly advocated for (1) maintaining the long-standing FTC exemption to the telemarketing rules for face-to-face sales transactions, (2) limiting the applicability of the FCC rules to interstate calls, (3) clarifying that calls to FSBOs and expired listings fall outside the scope of the DNC rules, and (4) limitations of fee increases for access to the DNC Registry.

For more information on compliance with do-not-call laws, visit our field guide on realtor.org.

Opposition Arguments:

Opponents may argue that the rising number of unsolicited telephone calls made to consumers encroach upon their privacy. The fees charged for access to the DNC Registry are appropriate and reflect Congressional intent.

Legislative/Regulatory Status/Outlook

500 New Jersey Avenue, NW
Washington, DC 20001
(800) 874-6500
nar.realtor

NAR Issue Summaries

Technologies / Telemarketing/Cold-calling

Authorizing Legislation:

The Telephone Consumer Protection Act (TCPA) was signed into law Dec 20, 1991. The Act directed the FCC to create rules to create a mechanism by which telephone subscribers could avoid unwanted telephone solicitations, including both live voice solicitations and artificial or prerecorded voice advertisements. Regulations implementing the law became effective in December 1992.

The Telemarketing and Consumer Fraud and Abuse Prevention Act (TCFAPA) was signed into law Aug 16, 1994. The Act directed the FTC to prescribe rules within 365 days prohibiting deceptive and abusive telemarketing acts or practices. On February 14, 1995 the FTC issued proposed rules; a second set of revised proposed rules were then released on May 31, 1995. The final regulations implementing this act were signed into law on August 16, 1995.

The TCPA rules state:

- Telephone solicitations may not be made to residences prior to 8:00a.m. or after 9:00p.m.
- Caller must identify himself or herself as well as the person or entity on whose behalf the call is being made and the telephone number and address of the person or entity.
- Callers must maintain a list of those residential telephone subscribers who do not want to be called and must institute procedures for maintaining their do-not-call list and provide training to all personnel who are involved in any aspect of telephone solicitation.
- Telemarketing calls are prohibited from being made to: (1) emergency lines, (2) guest rooms of hospitals homes for the elderly or similar establishments, and (3) paging services, cellular telephone services or other radio common carrier service and (4) any number for which the called party is charged for the incoming call.
- Fax machines, computers or other similar electronic devices are prohibited from being used to send unsolicited advertisements to facsimile machines.
- Consumers, state authorities and the FCC may bring actions against telephone solicitors for violations of the TCPA or its Rules.

The TCFAPA rules state:

- Telephone solicitations may not be made to residences other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.
- Caller must disclose the identity of the seller, that the purpose of the call is to sell goods or services and that no purchase is necessary to win if a prize promotion is offered.
- Before a customer pays for goods or services, it is deceptive to fail to disclose or misrepresent material information, i.e., total costs, material restrictions, conditions to purchase, terms and conditions of sellers refund, and that no purchase is necessary to win if a prize promotion is offered.
- Making a false or misleading statement to induce any person to pay for goods or services. Assisting and facilitating known violators of this Act.
- Abusive Telemarketing acts or practices such as threats, intimidation, or the use of profane or obscene language. Repeatedly causing a phone to ring with the intent to annoy or harass or calling a person who has stated that they do not wish to be called.

500 New Jersey Avenue, NW
Washington, DC 20001
(800) 874-6500
nar.realtor

- Seller shall keep for 24 months advertising, brochures, telemarketing scripts and promotional materials.
- Exemption: Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller during which the customer has the opportunity to examine the goods or services being offered.
- Consumers, State authorities and the FCC may bring actions against telephone solicitors for violations of the Act or its Rules. FCC must be given notice.

Establishment of the DNC Registry:

In December 2002, the FTC issued regulations that created a national “Do-Not-Call” registry for consumers who choose not to received interstate solicitation calls. The FTC rules were then followed by Federal Communication Commission rules issued on June 26, 2003 that imposed similar rules on intrastate phone solicitations. The rules required firms that chose to telemarket to check the national database and avoid calling those households who had signed up for the registry. Authorized by the 1990's telemarketing statutes giving the agencies authority to regulate telemarketers, both the FTC and FCC rules arose out a desire to eliminate telemarketing abuses that earlier agency guidance had failed to curtail.

In order to administer and maintain the DNC database, annual fees for access to the registry's database for compliance purposes are charged to firms that chose to telemarket. Initially, these fees are determined annually by the FTC who managed the registry. Telemarketer fees to access the DNC lists increased in each of the years following the Registry's implementation until a 2007 announcement that fees would not increase in 2008.

It was then proposed that fees for Registry access should be set by federal statute rather than the FTC. Such an action would take the fee setting process out of the hands of the FTC and tie any future increases to a commonly accepted public index of the rate of inflation. The FTC supported the proposal. The need for Congressional reauthorization of the DNC Registry program for 2008 and future years provided an opportunity for such a change to be made.

Legislation was also approved that allowed individuals to permanently register their phone numbers on the do-not-call (DNC) registry. Initially, consumers were required to re-register their phone numbers every five years.

NAR Involvement

Throughout the rulemaking and subsequent legislative activity, NAR weighed in heavily on the debate, working with both the agencies and the Congress. Copies of NAR's comment letters and testimony before the House and Senate are available in NAR's Government Affairs archive.

Current Legislation/Regulation (bill number or regulation)

Effective October 16, 2013, anyone engaged in telemarketing will need prior express written consent to

place artificial or prerecorded telemarketing calls to a residential phone line or wireless number, or to send text messages or place calls to a wireless number using an automatic telephone dialing system. The new requirements are set forth in the Federal Communications Commission's (FCC) updated rules and regulations implementing the Telephone Consumer Protection Act of 1991 (TCPA), (hereinafter, the TCPA Rules).

Noncompliance presents a risk of costly class action litigation. The TCPA includes a private right-of-action provision allowing private claims for the greater of $500 per call violation or actual damages (or up to three times the statutory or actual damages for willful or knowing violations).[3] Class action litigation relating to text messaging and telemarketing has exploded in the last few years, and the upcoming changes increase the likelihood that the pattern will continue.