



Telecom Information Bulletin CRTC 2009-283

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Unsolicited Telecommunications Rules and the National Do Not Call List Rules as they relate to the real estate industry

1. The purpose of this information bulletin is to clarify for the real estate industry its obligations related to the Unsolicited Telecommunications Rules and the National Do Not Call List (National DNCL), which was established on 30 September 2008. In particular, this information bulletin sets out guidelines with respect to responsibility for complying with certain rules, including the requirement to register with, and provide information to, the National DNCL operator and the requirement to subscribe to the National DNCL.

Introduction

2. The Commission regulates unsolicited telecommunications pursuant to section 41 of the *Telecommunications Act* (the Act), which provides that

The Commission may, by order, prohibit or regulate the use by any person of the telecommunications facilities of a Canadian carrier for the provision of unsolicited telecommunications to the extent that the Commission considers it necessary to prevent undue inconvenience or nuisance, giving due regard to freedom of expression.

3. In Telecom Decision 2007-48, the Commission established a comprehensive framework setting out rules governing the National DNCL and unsolicited telecommunications received by consumers. The Commission's Unsolicited Telecommunications Rules include the National DNCL Rules, the Telemarketing Rules, and the Automatic Dialing-Announcing Device (ADAD) Rules.¹

The real estate industry

4. A person responsible for marketing and selling real estate products and services to consumers may be referred to as a salesperson, agent, or broker. For the purpose of this information bulletin, such persons will be referred to as agents.
5. Real estate agents act on behalf of real estate brokerages. Brokerages are businesses that trade in real estate for compensation on behalf of others. For the purpose of this information bulletin, the term brokerage will include businesses that are owned and operated by a corporate real estate company, franchises of corporate real estate companies, and businesses that are independently-owned and operated.

¹ The Unsolicited Telecommunications Rules are set out in Telecom Decisions 2007-48 and 2008-6-1, and Telecom Regulatory policy 2009-200. The most recent version of the Unsolicited Telecommunications Rules is found online at <http://www.crtc.gc.ca/eng/trules-reglest.htm>.

6. Brokerages have either a principal/agent (or, in Quebec, mandator/mandatary)² or an employer/employee relationship with their agents.³ In a real estate transaction, the brokerage, and not the individual agent, is the legal representative of the buyer or seller. For instance, in the case of a listing agreement to sell a home, the agreement is between the seller and the brokerage.

Application of the Unsolicited Telecommunications Rules to telemarketing telecommunications initiated by real estate agents

7. The Commission notes that real estate agents in some cases initiate telecommunications with consumers for the purpose of selling or promoting a product or service. The Commission considers that these telecommunications constitute telemarketing and are therefore subject to the Unsolicited Telecommunications Rules, including the National DNCL Rules.

Responsibility for subscribing to the National DNCL, paying fees, registering, and providing information to the National DNCL operator

8. Section 72.02 of the Act states that a person is liable for a violation committed by an employee, or an agent or mandatary, of that person acting in the course of the employee's employment or within the scope of the agent or mandatary's authority. As noted above, agents act on behalf of brokerages as either an employee or an agent or mandatary. Brokerages are therefore liable for violations of the Unsolicited Telecommunications Rules by their agents pursuant to section 72.02 of the Act.
9. Accordingly, brokerages are responsible for registering with and providing information to the National DNCL operator;⁴ becoming a registered subscriber of the National DNCL; and paying all applicable fees to the extent that their agents initiate telemarketing telecommunications.⁵ Brokerages must implement measures to ensure that their agents comply with the Unsolicited Telecommunications Rules, including ensuring that their agents have access to up-to-date versions of the National DNCL.

Application of the existing business relationship exemption

10. In some circumstances, a telemarketing telecommunication initiated by an agent will be exempt from the National DNCL Rules by virtue of the existing business relationship exemption.⁶
11. The term "existing business relationship" is defined in subsection 41.7(2) of the Act as:

A business relationship that has been formed by a voluntary two-way communication between the person making the telecommunication and the person to whom the telecommunication is made, arising from

- (a) the purchase of services or the purchase, lease or rental of products, within the eighteen-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made from the person or organization on whose behalf the telecommunication is made;

² A principal/agent relationship occurs when one person, an agent, acts on behalf of another person, the principal.

³ In the traditional employer/employee relationship, an employer hires, supervises, and pays an employee for work performed.

⁴ Part III, Telemarketing Rules, section 2

⁵ Part II, National DNCL Rules, section 6

⁶ Part II, National DNCL Rules, section 3(b)

- (b) an inquiry or application, within the six-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made in respect of a product or service offered by the person or organization on whose behalf the telecommunication is made; or
- (c) any other written contract between the person to whom the telecommunication is made and the person or organization on whose behalf the telecommunication is made that is currently in existence or that expired within the eighteen-month period immediately preceding the date of the telecommunication.
12. In the Commission's view, when a consumer deals with an agent to obtain a service, make an inquiry or application, or enter into a written contract with a brokerage, an existing business relationship is formed between that consumer and the brokerage. Any agent of a brokerage that has an existing business relationship with a consumer can benefit from the existing business relationship exemption from the National DNCL Rules when making telemarketing telecommunications to the consumer.
13. The Commission notes that telemarketing telecommunications that are exempt from the National DNCL Rules must nevertheless comply with the other Unsolicited Telecommunications Rules, namely the Telemarketing Rules and the ADAD Rules.

Business-to-business exemption

14. A brokerage may promote its listings to various companies by way of telemarketing telecommunications. The Commission considers that these telecommunications are exempt from the National DNCL Rules as they are business-to-business telecommunications. However, such telecommunications must comply with the other Unsolicited Telecommunications Rules, namely the Telemarketing Rules and the ADAD Rules.

Secretary General

Related documents

- *Modifications to some Unsolicited Telecommunications Rules*, Telecom Regulatory Policy CRTC 2009-200, 20 April 2009
- *Delegation of the Commission's investigative powers with regard to Unsolicited Telecommunications Rules complaints*, Telecom Decision CRTC 2008-6, 28 January 2008, as amended by Telecom Decision CRTC 2008-6-1, 20 October 2008
- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007, as amended by Telecom Decision CRTC 2007-48-1, 19 July 2007

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