

Post, Tweet or Chat!

Managing Risk in Communication & Advertising



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Designated REALTOR® Overview of Technology, Communications & Advertising	Upon completion of this section the attendee will be able to:
Do Not Call Registry	Locate the Do Not Call Registry Explain the use of the DNC
Do Not Fax Policy	Implement the DNF Policy Explain use of consent forms
Do Not Email Policy CAN SPAM Act	Identify spam emails Employ an opt-out provision Explain an opt out provision
Calling on expired Listings	Identify the limitations of calling an expired listing
Advertising	Identify a blind advertisement Employ the legal elements of a website Create a social media post with legal elements Identify Fair Housing violations in advertising Articulate elements of illegal advertising
Agency/Relationship Disclosure	Describe the agency disclosure law Develop the tools need for compliance Explore the company policy for implementation of disclosure
Compliance with Marketing Regulations in Web Site Activities <ul style="list-style-type: none"> ○ 	Identify the legal requirements of a real estate website Identify three elements needed for legal compliance on a website
Compliance with Marketing and Disclosure regulations in Email-based Communications <ul style="list-style-type: none"> ○ Statute of Fraud – applicability of in-writing rule to electronic communications and documentation requirements for consumers 	Identify the legal requirements regarding email communication Create an email signature file to make required disclosures Create an email signature file to avoid client liability in contract creation

Do Not Call Registry

OVERVIEW

The general rule is that you are free to make telephone calls soliciting your services or a property, unless the telephone number that you are calling appears on the Do Not Call list. In addition, you are free to continue calling persons on your “sphere of influence” list, i.e., “acquaintances”, even if their telephone numbers do appear on the National Do Not Call list. Also, keep in mind that the Do Not Call laws do not apply to calls to a consumer’s business telephone number.

Internal list. If the telephone number appears on our internal Do Not Call list, you must first obtain the recipient’s written permission before you can call that number (we expect that there will be very few numbers on our internal list).

National list. If the telephone number does not appear on our internal Do Not Call list, but does appear on the National Do Not Call list, you may still call that number, if (1) the recipient is an “acquaintance”, or (2) you have an “existing business relationship” (as defined below) with the recipient, or (3) you have received written permission from the recipient. Persons on your “sphere of influence” list should qualify as “acquaintances”, i.e., persons who, based on prior contact with you, would know who you are when you introduce yourself on the call.

SPECIFICS (NATIONAL AND INTERNAL)

A telephone number appearing with a “Do Not Call” message means that you may call that number **ONLY** under the following circumstances:

you have an **existing business relationship** with the individual whose telephone number appears with a Do Not Call message (meaning you have completed a transaction with the individual within the past 18 months or you have received an application or inquiry from that individual within the past 3 months) **and** that individual has **not** placed their name on the internal.

OR

you have received that individual’s **express, signed, written permission** to call them for telemarketing purposes.

The Registry is available here: <https://telemarketing.donotcall.gov/>.

SAFE HARBOR

There is a "safe harbor" for inadvertent mistakes. To meet the safe harbor, the entity making the call must demonstrate that:

- It has written procedures to comply with the do not call requirements
- It trains its personnel in those procedures
- It monitors and enforces compliance with these procedures
- It maintain a company specific list of telephone numbers that it may not call
- It accesses the national registry no more than 31 days prior to calling any consumer and maintains

records documenting this process

-Any call made in violation of the do not call rules was the result of an error

FINES AND PENALTIES

The fine for calling someone whose name appears on the Do-Not-Call Registry is up to \$11,000 per call by the federal government, \$500 for a lawsuit by a state attorney general or a consumer.

The FCC provides for a private right of action. Aggrieved consumers can sue if they receive two calls in violation of the regulations by the same company within a twelve-month period and collect \$500 for each violation.

Do Not Fax Policy

OVERVIEW

1. Sender must have an “established business relationship” with recipient or written consent from recipient prior to sending unsolicited advertising faxes.
2. Sender must have “voluntarily” received recipient’s fax number.
3. Sender must provide recipient right to opt-out of receiving future unsolicited advertising faxes.
4. Sender must honor opt-outs received from recipients within 30 days of receipt.

These rules require all messages sent via facsimile machines clearly contain the date and time that the message was sent as well as the identification of the business entity or individual sending the message and the telephone number of the machine sending the message or of the business entity or individual sending the message. This information must be contained in a margin either at the top or the bottom of each page transmitted or on the first page of the transmission. Following the issuing of the rules, an FCC order clarified that the rules also apply to the sending of faxes to personal computers equipped with, or attached to, modems and to computerized fax servers.

Opt-out Requirement

All faxes containing unsolicited advertisements must contain an opt-out mechanism to allow the recipient the ability to opt-out of receiving future advertising faxes from the business. The opt-out must also be included in advertising faxes even when the sender has the recipient’s written consent to send the fax. The opt-out requirements are:

- (1) Opt-out must be clear and conspicuous in its terms and on the first page of the fax (cover sheet if using one).
- (2) Opt-out must state that the recipient has the right to opt-out of future unsolicited advertisements, and that the sender’s failure to comply with opt-outs within 30 days is unlawful.
- (3) Opt-out must provide a domestic telephone and fax number where the recipient can send opt-out request as

well as provide a cost-free mechanism for opting-out, if neither of the first two methods qualifies as a cost-free mechanism. The opt-out mechanism must be available 24 hours a day, 7 days a week.

SAMPLE OPT OUT

Opt-Out Request: The recipient of this facsimile may make a request to the sender not to send any further facsimiles. All such opt-out requests should be faxed to 555-123-4567 and the request must identify the telephone number(s) of the facsimile machine(s) to which the opt-out request applies. Opt-out requests may be faxed any time, 24 hours a day and 7 days a week. The failure by the sender to comply with an opt-out request within the time frame to be determined by the FCC is unlawful.

Opt-Out Request: The recipient of this facsimile may make a request to the sender not to send any further facsimiles. All such opt-out requests should call 1-800-555-1234 or email me @myrealestatecompany.com and the request must identify the telephone number(s) of the facsimile machine(s) to which the opt-out request applies. The failure by the sender to comply with an opt-out request within the time frame to be determined by the FCC is unlawful

PENALTIES

The penalties for violating the TCPA are \$500/fax, with treble damages for willful violations. Consumers have a private right of action under the law, so the law can be enforced by consumers, state attorney generals, or the FCC.

Do Not Email/CAN SPAM Act

OVERVIEW

Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM)

Congress created the Act to give recipients the ability to limit the number of unsolicited commercial electronic mail messages (otherwise known as "spam") they receive. The Act does not prohibit the sending of these messages, unless the recipient has "opted out" of receiving future electronic mail messages from the sender. Rather, the Act imposes certain requirements on senders who send commercial electronic mail messages.

For real estate professionals and REALTOR® associations, the relevant provisions of the Act require that all commercial electronic mail messages contain the following: (1) a legitimate return e-mail and physical postal address; (2) a clear and conspicuous notice of the recipient's opportunity to "opt-out," or decline to receive any future messages; (3) opt out mechanism active for at least 30 days after

message transmission; and (4) clear and conspicuous notice that the message is an advertisement or solicitation.

OPT-OUT PROCESS

The new requirements specify that senders cannot complicate the opt-out process. You can only require an e-mail address on the opt-out page that visitors get to when they click the “unsubscribe” link in your e-mail, and you can’t require a user to visit more than one Web page to opt out.

If you require users to log in to an account with a username and/or password to “manage their e-mail preferences” when all they want to do is unsubscribe, you’re out of compliance. If you have an opt-out survey or a five-page opt-out process designed to make your customers think twice before opting out, you are not in compliance with the law. Charging a fee or requiring any information beyond their e-mail address is now strictly prohibited.

The single-page, single e-mail address form, Web-based opt-out has always been considered a best practice, and now that level of simplicity is a requirement by the law. Keep in mind that you can, however, ask for more information on the opt-out page — you just can’t require it.

One thing that did not change is the 10-day opt-out rule. The reality is that spammers do not honor opt-outs at all while legitimate marketers have not been opportunistic with the 10-business-day window, so the FTC saw no reason to shorten the time frame.

OFFICE POLICY

Running an effective and ethical bulk-mail list takes a lot of work. You could put together the tools to do this work for yourself (and such tools are often free or of very low cost), but you might find that you’d be spending too much time running your list and not enough running your business.

There are several companies that specialize in helping small businesses and institutions run mailing lists or vendors that can handle not only your marketing electronically but the CAN SPAM requirements as well.

PENALTIES

Each violation of the above provisions is subject to fines of up to \$11,000. Deceptive commercial email also is subject to laws banning false or misleading advertising.

Calling on Expired Listings

ETHICS

Article 16 is intended to recognize as unethical two basic types of solicitations:

telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR®; and mail or other forms of written solicitations of prospects whose properties are exclusively listed with another REALTOR® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, “for sale” or “for rent” signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS® under offers of subagency or cooperation.

Standard of Practice 16-4

REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing; i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing.

“DO NOT CALL” LIMITATIONS

The general rule is that you are free to make telephone calls soliciting your services or a property, unless the telephone number that you are calling appears on the Do Not Call list. In addition, you are free to continue calling persons on your “sphere of influence” list, i.e., “acquaintances”, even if their telephone numbers do appear on the National Do Not Call list. Also, keep in mind that the Do Not Call laws do not apply to calls to a consumer’s business telephone number.

Advertising

Advertising laws, regulations, Code of Ethics and practices apply to all forms of advertising. In 2018 we can consider the following as forms of real estate advertising:

- Print ads,
- Web,
- Direct mail,
- Target marketing,
- E-mail and
- Social Media

RESPONSIBLE PARTY

Most states specify the company as the party that must be identified in all advertising. Many states have regulations regarding an agent or team identification in advertising. It is important to be aware of state specific regulations that govern advertising.

FAIR HOUSING

Article 10

Realtors® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. Realtors® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

Standard of Practice 10-3

Realtors® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (*Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/14*)

Discriminatory advertising – no one can make, print or publish discriminatory ads including those who are exempt.

1. Ads that contain words, phrases, symbols or visuals that indicate a discriminatory preference or limitation.
2. Ads that selectively use media, human models, logos and locations to indicate an illegal preference or limitation.
3. Refusal to publish ads because of protected class.

Steering - the illegal practice of directing a member of a protected class towards or away from a particular area or neighborhood. This practice makes certain homes unavailable to people based on such things as race, national origin, familial status or any of the federal or state protected classes.

Steering is often subtle and difficult to detect, homeseekers can be unaware that their choices have been limited. Words, phrases or actions that are intended to influence the choices of a prospective buyer are discriminatory actions.

Preference implicit or implied.

False denial of availability – indicated through words or conduct limiting information.

Risk Management

- Adherence to standard policy and procedures
- Monitor your action for appearance and effect
- Avoid any false representations
- Good communication
- Never relate ethnic jokes, never use ethnic, racial or other stereotypes, whether the intent is positive or negative
- Maintain accurate records

Compliance with Marketing Regulations in Web Sites

Disclosures

Many disclosures required under state and federal law to be made to the consumer by the Brokerage or agents in their “bricks and mortar” world such as their office should be made in their “virtual world” such as their websites. Such disclosures are:

Fair Housing

Agency

Information Disclaimer

These disclosures can often be in a conspicuous place to the public as links contained in the footer of the website. In some instances, such as information disclaimers they should be more closely attached to a page on a website such as the property search page and the property data page.

Agent Website/Broker Identification

Standard of Practice 12-5 Realtors® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that Realtor's® in a reasonable and readily apparent manner either in the advertisement or in electronic advertising via a link to a display with all required disclosures.

(Adopted 11/86, Amended 1/16)

Privacy Policy

Internet Privacy: Before anyone submits personal information to anyone, on the Internet or elsewhere, they should be certain that the information will be held in trust and used only in ways that they have authorized. They should also confirm that their personal information will not be transferred or sold to any third party without their consent.

If you publish an electronic newsletter (ezine), your subscribers will feel more secure if they know that you will not forward their names or email addresses to any third party without consent.

Standard of Practice 12-11 Realtors® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner. *(Adopted 1/07)*

On-Line Classifieds

Advertising by any other name is still advertising. On-line classifieds although easy to access, submit data and at little to no costs are no different than the print advertising the industry has been using for years. Things to consider when placing an on-line classified.

- Who is on the site?
- What information can you post?
- Is it text only, or is there a multimedia capability?
- How easy is it to find the site?
- Are you addressing the needs of the seller or buyer?

It is also important to remember that all laws and regulation regarding real estate advertising apply.

Compliance with Marketing and Disclosure Regulations in Email

SIGNATURE FILE

Signature files should be created for all emails. Identification of Broker which includes name, address and phone number must be included.

Agency Disclosure

Substantive Meeting

Electronic Communication

STATUTE OF FRAUD

Can online communication be considered a contract in writing? The answer appears to be an overwhelming yes, coming from the courts. In cases all across the country we are seeing decisions being handed down that enforce contracts created in writing by the use of emails and texts.