COLD CALLING PHONE REGULATIONS

REALTORS® who use the telephone to get in touch with potential clients and customers must comply with a new regulation on telephone solicitations, effective December 20, 1992, according to NATIONAL ASSOCIATION OF REALTORS® analysts.

The regulation, issued October 16 by the Federal Communications Commission, implements portions of the Telephone Consumer Protection Act of 1991 (TCPA) and applies to all telemarketers.

The use of automated telephone dialing systems and prerecorded voice messages is severely restricted by the regulation, which places only minor limitations on person-to person telephone solicitations.

Following is a rundown of the regulation's restrictions and the steps real estate brokers and sales associates must take to comply with them:

Person-to-Person Calls

No calls may be made to residences before 8:00 a.m. or after 9:00 p.m.

A solicitor must identify himself and the company and provide the company's telephone number. If an "established business relationship" exists with a customer, a solicitor is exempt from this requirement. An established business relationship exists when there has been prior, voluntary two-way communication between a business entity and consumer, whether or not the contact resulted in an actual business transaction involving the services offered by the solicitor.

A real estate firm whose sales associates conduct live cold calling must honor consumer's requests not be called again by maintaining in writing a do-not-call list of residences. A company must also have a written policy for maintaining its list.

A firm must advise employees and independent contractors engaged in any aspect of telephone solicitation about its do-not-call list and must train employees and independent contractors how to maintain the list as required by the firm's written policy.

A consumer's request not to be called applies to the business entity making the call and not affiliated business entities unless the consumer reasonably would expect the affiliated business entities unless the consumer reasonably would expect the affiliated business to be included, given the identification of the caller and the product or service being advertised.

Autodialers and Faxes

No calls may be made to any residential telephone line using an automated telephone dialing system or artificial or prerecorded voice to deliver a message unless there is prior consent from the called party, an established business relationship exists, the call is an emergency or the call is made by a tax-exempt non-profit organization.

Autodialers may not be used in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

All automatic systems shall identify the name and address or telephone number of the person or firm making the call.

No individual or firm may use a telephone fax machine, computer or other device to send unsolicited advertisements to a telephone fax machine.

Penalties

Consumers, state authorities and the FCC may sue telemarketers for up to $500 in damages for violating the regulation. Telemarketers who have established a record of compliance with the regulation may present examples of this compliance - such as a do-not-call list - as a defense to alleged violations.

State Laws

The Telephone Consumer Protection Act does not pre-empt state laws that may impose tighter regulations regarding automated or person-to-person telephone solicitations.

If you have questions about the regulation or would like a two-page summary of it, contact Robert Nickens in NAR's State and Municipal Government Affairs Division, 777 14th Street, NW, Washington, DC 20005; telephone (202) 383-1201; fax (202) 383-7580. Or contact Roy DeLoach in NAR's Government Affairs Division at the same NAR address; telephone (202) 282-1171.