

Chapter 10

Telephone Solicitation and Consumer Telemarketing Protection



Many consumers have received telemarketing calls at odd hours, disrupting their dinners or workdays with aggressive pitches to buy things they don't need. In many cases, these calls are more than just aggravating. They are abusive and can potentially trick people into buying products that are defective.

Sign Up For Do-Not-Call Lists

To avoid being contacted by telephone solicitors, consumers can sign up for various Do-Not-Call lists. Two of the lists include the National Do-Not-Call Registry and Tennessee's Do-Not-Call list. Being on both lists can reduce the number of unwanted calls. Consumers can register for the National Do-Not-Call Registry by calling 888-382-1222 or going online to www.donotcall.gov. To be placed on Tennessee's Do-Not-Call list or Do-Not-Fax list, consumers may contact the Tennessee Regulatory Authority (TRA) at www.tn.gov/tra or by calling 877-872-7030. The TRA maintains Tennessee's Do-Not-Call list and brings administrative actions for the violation of the TRA-related Do-Not-Call statute.

The Telemarketing Sales Rule

The Federal Trade Commission's (FTC) Telemarketing Sales Rule²¹ (TSR) helps protect consumers from fraudulent telemarketing calls. With some exceptions, individuals or companies that take part in any plan, program, or campaign to sell goods or services through interstate telephone calls must comply with the TSR.

Generally, a person who is making a telephone solicitation may only call between the hours of 8 a.m. to 9 p.m. At the beginning of the call, the telephone solicitor must clearly state his or her identity and the organization that the person represents. Under the TSR, a telemarketer is also:

- required to make disclosures of specific information;
- prohibited from making misrepresentations;
- required to transmit Caller ID information;

²¹ Portions of this chapter were taken from the Federal Trade Commission's website at: <http://www.business.ftc.gov/documents/bus27-complying-telemarketing-sales-rule>

- prohibited from unauthorized billing;
- required to abide by payment restrictions for the sale of certain goods and services;
and
- required to keep specific business records for two years.

Telemarketers must provide consumers with material information in a clear and conspicuous manner. For example, a telemarketer can't pitch a consumer a "seaside" timeshare condo without disclosing that the unit is 20 blocks from the beach. The telemarketer has to include the key limitations of the product or package he or she is trying to sell. Under the TSR, these disclosures should be communicated in a clear and conspicuous manner. Before a consumer pays for goods or services, telemarketers must disclose the total cost to buy, receive, or use the offered goods or services as well as the total quantity of goods the consumer must pay for and receive.

If the telemarketer mentions any kind of special refund, cancellation, exchange or repurchase policy during the sales pitch, he or she must state all of the terms and conditions that may affect the consumer's decision to buy the goods or services. If there is an "all sales are final" policy, the telemarketer must disclose it to the consumer prior to payment of the offered goods or services.

Prize Promotions

Regulations also exist to protect consumers from being scammed with prize promotions. Under the TSR, prize promotions include sweepstakes or games of “chance” as well as representations that a consumer has won, has been selected to receive, or is possibly eligible to receive a prize. The element of “chance” means that the consumer is guaranteed to receive an item, but at the time of the offer, the telemarketer does not tell the consumer the specific item that he or she will receive. The following information must be disclosed when the telemarketer discusses prizes:

- The odds of winning or if no odds can be calculated, the fact that no odds can be calculated as well as any factors that may be used for calculating the odds;
- That the consumer can participate in the promotion or could potentially win without buying anything or making a payment;
- How to enter the prize promotion without paying and/or an address or local/toll-free telephone number where such information can be found; and
- Any costs or conditions that exist in order to get or redeem any prize.

Exemptions for Telefundors

When it comes to telemarketing, Do-Not-Call provisions do not include calls from political organizations, charities, telephone surveyors, or companies with which a consumer has an existing business relationship. “Telefundors” are telemarketers who solicit charitable contributions. Telefundors are now required to:

- Make certain prompt disclosures in every outbound call;
- Get express verifiable authorization if accepting payment by methods other than credit or debit card;
- Maintain records for 24 months;
- Comply with the entity-specific Do-Not-Call requirements; and
- Include in any prerecorded message call on behalf of a non-profit organization to a member of, or previous donor to, the non-profit, a prompt-key to press or voice-activated mechanism for the consumer to opt out.

Telefundlers are prohibited from:

- Making a false or misleading statement to induce a charitable contribution;
- Making various specific prohibited misrepresentations;
- Engaging in credit card laundering;
- Placing cold calls that deliver prerecorded messages; and
- Engaging in acts defined as abusive under the TSR, like calling before 8 a.m. or after 9 p.m., disclosing or receiving consumers' unencrypted account information, and denying or interfering with a consumer's right to be placed on a Do-Not-Call list.

Avoiding Telemarketing Scams

The following are some general tips to help consumers avoid telemarketing scams:

- If payment is asked in advance for a prize, it may be a scam. To receive a prize, a consumer should never have to pay in advance.
- Lottery tickets cannot be sold over the phone.
- Calls from people the consumer does not know who ask for Social Security numbers, credit card numbers, or bank account information are almost definitely a scam. Do not give personal information over the phone to someone who has initiated the call.
- Receiving a telemarketing call after signing up for the Do-Not-Call Registry could indicate a scam.
- Be wary if mail or e-mail is received containing lottery or sweepstake prizes. Responding could cause the consumer to be targeted by fraudulent telemarketers who operate worldwide.
- Beware if a telemarketer sends a check as reimbursement for taxes or fees that the consumer is asked to pay for a prize or award. The scammer could be sending a counterfeit check.

Telemarketers' Internal Do-Not-Call Lists

Under Tennessee law, the Tennessee Division of Consumer Affairs (DCA) also has authority over a marketing firm's internal Do-Not-Call lists. A telephone solicitor is required to add a consumer to its internal Do-Not-Call list if the consumer makes that request. This law is separate from the Tennessee and the National Do-Not-Call registries. If a consumer wants to be placed on a company's Do-Not-Call list, the consumer can tell solicitors that he or she does not want to receive a call again and that he or she wants to be added to the company's internal Do-Not-Call list. Consumers should make a note of the telephone number and date of the request for his or her records. There are a few exclusions to the law, such as where the consumer expressly requests the call, has an existing debt or contract with the company which has not been completed at the time of the call, or has a prior or existing business relationship with the company.

Finally, the FTC's website contains a substantial amount of helpful information for consumers related to frauds and scams. Consumers can contact the FTC or file a complaint by calling 877-382-4357 or going online to www.ftccomplaintassistant.gov.

