LOTL Do Not Call Refresher

Hello Michigan Realtors® and welcome back to the Letter of the Law. In this installment, we are going to review the law as it relates to cold calls. In our discussion, we are assuming two things:

First, that the calls (or texts) are being made in person and NOT via an automated telephone dialing system or using a prerecorded or artificial voice.

Second, that the purpose of the call is to request a face-to-face meeting and the caller is not requesting the recipient of the call to hire the agent during the call.

If either of these assumptions are not true, then there are additional legal requirements that we will not be covering in this installment. And a brokerage would do well to consult their own counsel on how best to navigate these additional legal requirements.

Each brokerage company should decide whether to permit its agents to make cold calls to potential clients. If cold calling is permitted, then the company needs to make sure that its agents are properly trained, as the company may be held responsible for its agent's violations.

Companies who permit cold calling must register with the Federal Trade Commission in order to obtain access to the federal do not call (or "DNC") registry. Realtors may not call or text anyone on the DNC registry unless they have an "established business relationship" with that person. A company must obtain an updated version of the DNC registry at least every 31 days.

There are two kinds of "established business relationships." One is based on a consumer's purchase of a business's goods or services within 18 months preceding the call. The 18-month period runs from the date of the last payment, transaction or shipment between the consumer and the business. The other type of "established business relationship "is based on a consumer's inquiry regarding a company's goods or services and exists for three months from the date of the inquiry.

Even if there is a clear "existing business relationship," if a consumer asks that the business stop calling them, the business must honor that request. A company must maintain a company specific DNC list. If a consumer tells one agent they no longer wish to be called, all agents in the company must honor that request.

Michigan law prohibits unsolicited marketing calls between the hours of 9:00 p.m. and 9:00 a.m.

Any individual may sue a violator of the DNC rules for money damages. A consumer can recover up to $500 in damages for each violation. And, if a court determines that the telemarketer willfully or knowingly violated the law, a consumer can recover up to $1,500 per violation. In addition, an individual may file a complaint with the FTC, which has the power to assess penalties for violations of the DNC rules.

There is, however, a way that companies can protect themselves in the case of honest mistakes which result in a violation of the DNC rules. Specifically, there is a "safe harbor" whereby a telemarketer will not be subject to penalties or sanctions for erroneously calling or texting a consumer who is on the national "do not call" registry. In order to invoke the protections of the "safe harbor," a company must:

- establish and implement written procedures to honor the "do not call" requests of consumers.
- train its personnel in those procedures.
- maintain a company-specific "do not call" list.
- use and maintain records which document a process for preventing calls to national registry downloaded within 31 days of the date any call is made.
- monitor and enforce compliance with its established "do not call" procedures.

In addition, obviously, the call must have been made by mistake. By establishing and maintaining these policies, companies can protect themselves against significant potential penalties under federal law.

Since we have been fielding a number of not-so-cold calls on this topic, we thought a refresher was in order. We hope you enjoyed the segment. However, if you have any questions, please don't hestitate to reach out at the email in the video description. Thanks, and we'll see you next time!