

THE NATIONAL DO-NOT-CALL LIST



Information for REALTORS®

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CREA
The Canadian Real Estate Association

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This information has been prepared by The Canadian Real Estate Association to help members comply with Canada's National Do-Not-Call List (DNCL), but should not be considered legal advice or a presentation of all aspects of the federal legislation and regulations. You can also review this information on the DNCL Compliance website, posted in the Compliance Centre on www.realtorlink.ca





WHAT IS THE NATIONAL DO-NOT-CALL LIST?

The Canadian Radio-Television and Telecommunications Commission (CRTC) is responsible for the National Do-Not-Call List (DNCL), which contains the names and telephone numbers of consumers who do not want to receive unsolicited telephone calls from telemarketers.

Telemarketing is the use of telephony technology (telephone, cellphone, fax, etc.) to make unsolicited telephone calls or send unsolicited messages to consumers for the purpose of solicitation. Solicitation is selling or promoting a product or service, or soliciting money.

The object of the National DNCL is to provide a way for consumers to prevent telemarketers from calling them without consumers having to deal with individual telemarketers and their do-not-call lists. Telemarketers will not be permitted to call any of the numbers on the National Do-Not-Call List (DNCL), **unless they already have an existing business relationship with the consumer or individual**. Please see the definition of existing business relationship on Page 2.

The federal legislation creating the framework for Canada's National Do-Not-Call List was passed in 2005. On December 21st, 2007, the CRTC awarded a five-year contract to Bell Canada to operate the National DNCL, and announced the list would be active on September 30th, 2008. The operator is responsible for registering numbers, providing telemarketers with up-to-date versions of the National DNCL, and receiving consumer complaints about telemarketing calls.

Consumers can register up to three different telephone numbers on the list, and have to renew that list every three years. There is no cost for getting on to the list. Telemarketers are required to monitor the National DNCL and remove any numbers they find on it from their calling lists. Telemarketers have to pay for access to the list.

Real estate brokers and salespersons, including REALTORS[®], making unsolicited telephone calls are "telemarketers" within the meaning of the legislation. This doesn't mean you cannot contact consumers in other legal ways, such as direct mail. It means if the consumer (including private sellers) puts their telephone numbers on the National Do-Not-Call List, you cannot telephone or fax them to solicit business unless the situation meets one of the exceptions described on Page 2.

Do-Not-Call in other countries

- *The Do-Not-Call Registry in the United States was established by the Federal Trade Commission in 2003. It now includes more than 100 million phone numbers.*
- *There are more than 10 million telephone numbers registered in the United Kingdom's Telephone Preference Service.*
- *Australia's do-not-call registry generated more than one million phone numbers in four weeks*
- *The Telecom Regulatory Authority in India is establishing a national do-not-call list.*
- *In Canada, 63 per cent of respondents in a 2007 national survey said they would register with a do-not-call registry.*



ARE THERE EXCEPTIONS TO THE DO-NOT-CALL LIST?

The legislation establishing the National Do-Not-Call List allows for the following exceptions. These types of organizations, or business situations, do not have to refer to the Do-Not-Call List.

- Registered charities;
- Political parties;
- Nomination contestants, leadership contestants or candidates of a political party;
- Opinion polling firms or market research firms conducting surveys when the call does not involve the sale of a product or service;
- General circulation newspapers calling for the purpose of selling a subscription;
- **Calls to consumers who have given consent to being called;**
- **Calls to a consumer who has an existing business relationship with the organization; and**
- **Calls to business telephone numbers.**

Note: Those exceptions indicated in bold are important to real estate.

Individuals may give consent to being called, even if they are registered on the National DNCL. This consent does not have to be in writing, but it must be absolutely explicit – for example, it is not enough for customers to agree to be called. They must specifically agree to being contacted **by telephone**. If a customer does not explicitly agree to be contacted by telephone, then no consent has been given.

This consent must fit the PIPEDA standard of express oral or written consent. Express consent means that the purpose of gathering information was disclosed and clearly explained at the time the information was gathered, and that the client gave voluntary verbal or written authorization for that use. Further information about PIPEDA requirements is available at <http://www.ic.gc.ca/epic/site/ecic-ceac.nsf/en/gv00466e.html#question7>.

Defining an existing business relationship

An existing business relationship between a consumer and an organization, such as a real estate brokerage, is defined in three ways:

- The consumer purchased or leased a product from the organization within the past 18 months;
- The consumer had a written contract with the organization that expired within the past 18 months (such as a Listing Agreement); or
- The consumer had made an inquiry with the organization within the past six months (for example, the consumer called for a listing presentation)

Consumers that had a contract or lease with an organization are still considered to have a business relationship with that organization for a further 18 months from the date the contract expires. The organization can contact them throughout that period, unless at any time the consumer asks not to be called.



IS THE NATIONAL DO-NOT-CALL LIST THE ONLY DO-NOT-CALL LIST?

Organizations making calls that are exempt from the National DNCL (except for organizations collecting information for a survey) are also required to keep their own do not call lists. For example, when a broker or salesperson contacts a consumer under terms of the exceptions specified on Page 3, that consumer can still ask to be put on the broker's do not call list. This request can be verbal, and does not have to be submitted in writing.

This means that a broker office must create and maintain its own do not call list. Even if there is an "existing business relationship" as defined by the legislation, and your client asks to be put on your firm's list, you must be able to comply and be able to refer to that record at any time.

It is recommended that a broker office develop the structure for their organization's own do not call list in a simple computerized format that is accessible to everyone in the organization. Your do not call list should include the name of the individual, the telephone number specified, and the date of the request.

A simple EXCEL form has been created as a PDF that brokers can download from the CREA DNCL Compliance Centre on REALTOR Link® for this purpose.

HOW DO CONSUMERS REGISTER?

Consumers will be able to sign up for the National DNCL after September 30th, 2008, by telephone, fax or email. There is no cost to consumers to register. A website has been created, www.LNNTNTE-DNCL.gc.ca, with contact information and instructions for consumers. The telephone number for consumers to call is 1-866-580-3625 (DNCL). Individuals will be able to put their names and up to three telephone numbers on the list. These can be land lines, cell phone numbers or fax numbers.

Registered numbers will stay on the National DNCL for three years. After that, they'll automatically be de-registered. There is no requirement for the National DNCL operator to contact consumers to inform them that their registration is expiring. Please note that in October 2008, the CRTC announced a public consultation for a proposal to make the telephone number registration permanent.

Under the current rules, consumers will be responsible to re-register their telephone numbers after the three-year period. Consumers can re-register their numbers at any time, however; the three-year expiry period will restart every time they do.

It is important to know that the registration is for the telephone number, not the person. If a registrant changes their telephone number, they will have to register their new telephone number with the National DNCL. When the new telephone number is registered the three-year expiry period re-starts.

Telemarketers will be allowed 31 days to update their lists, so consumers may continue to receive unsolicited calls for a few weeks after registering their telephone numbers.



WHAT ARE THE COSTS AND PROCESS FOR TELEMARKETERS?

Under the new rules, any person or company that does telemarketing will have to monitor the National DNCL and make sure not to solicit anyone who is on this list.

The Do Not Call Rules state that the lists cannot be shared with any third parties, including affiliates. At CREA's request, the CRTC has clarified how this Rule is applied in brokerage offices:

1. It is the brokerage, not the real estate agent, that is the "telemarketer". Therefore, a brokerage only needs to subscribe to buy one list, and all of the salespeople in that office can share it.
2. A brokerage that has subscribed to the Do Not Call List can, as a general proposition, share that list with "branch offices" as long as those offices have the same ownership and are not separate legal entities. If the different offices have different owners or been set up as separate legal entities, they must each have their own subscription. Brokers are encouraged to consult their own legal counsel to determine whether this exception applies to their circumstances.

Telemarketers will have to subscribe to receive the list, and download it as needed. They must open an account with the National DNCL operator and pay a subscription fee. The cost of running the National DNCL will be recovered through these fees. To accommodate both large and small-scale telemarketing operations, the CRTC will make several subscription price options available to telemarketers.

The most economical option for operators who make only a small number of calls will be the 'query subscription'. Instead of downloading a list, subscribers that choose this plan can go to a website where they can enter in individual telephone numbers to check if they are on the National DNCL.

To sign up for an account, telemarketers will have to go to the CRTC's DNCL website at www.LNNT-ENCL.gc.ca. Affiliated companies will each have to maintain their own subscriptions – they will not be allowed to pool their resources and share a subscription.

The CRTC approved the telemarketer subscription fee rates to the National DNCL as follows:

SUBSCRIPTION OPTION - BY AREA CODE

<i>Number of area codes</i>	<i>Annual</i>	<i>6-month</i>	<i>3-month</i>	<i>1-month</i>
All area codes	\$11,280	\$5,640	\$2,970	\$1,125
By individual area code	\$615	\$310	\$155	\$55

SUBSCRIPTION OPTION - BY TELEPHONE NUMBER

<i>Telephone number query</i>	<i>Per query</i>
Any area code (Maximum 100 queries queries per query session)	\$0.50





File Formats

Telemarketers will be able to download the National DNCL in two different file formats:

- Comma-separated values (CSV), also known as Flat Text Files; and
- Extensible Markup Language (XML) Tagged Files.

The files will be provided for downloading in one Zip file, which includes individual files for each Canadian NPA (area code) selected. If the full national list is selected, then one Zip file will be provided containing a single file with all numbers registered on the National DNCL for Canada.

Flat Text File format

The complete list in a flat text file will consist of one three-digit Canadian area code and seven-digit telephone number per line, with a linefeed at the end of each line. For example:

```
416,1234567
416,1234568
416,1234569
```

XML Tagged File format

When you download the full list as an XML Tagged file, an element indicates what level and value of data are contained in the file.

For the complete national list, the level is "all" and the value is null (Example 1).

For an area code list, the level is "ac" and the value is the area code, such as 416 (Example 2).

Example 1: National List

```
<list type='full' level='all' val='' />
<ac val='416'>
  <ph val='1234567' />
  <ph val='1234568' />
  <ph val='1234569' />
</ac>
<ac val='905'>
  <ph val='1234567' />
  <ph val='1234568' />
  <ph val='1234569' />
</ac>
</list>
```

Example 2: Single Area Code List

```
<list type='full' level='ac'
val='416' />
<ac val='416'>
  <ph val='1234567' />
  <ph val='1234568' />
  <ph val='1234569' />
</ac>
</list>
```

Parallel to the introduction of the National DNCL, the CRTC has updated its rules for all unsolicited telecommunications – including those exempt from the National DNCL rules. The rules on sending unsolicited faxes and using automatic dialing devices have also been updated. All of the new rules are summarized on the CRTC's website at

http://www.crtc.gc.ca/eng/INFO_SHT/t1022.htm

OTHER THINGS REALTORS® SHOULD DO

Under Canada's Do-Not-Call legislation, all telemarketers must also maintain their own do not call lists – even if they are making calls that are exempt from the National DNCL rules.

If you call a consumer with whom you have an existing business relationship, for example, that consumer must still be allowed to request being placed on an internal do-not-call list. The organization must process that request immediately. There can be no cost to the consumer for this process, including costs for long distance calls.

This is to provide consumers additional protection if they are contacted by a company or organization covered by the exception rules. In other words, if a consumer does not want to be contacted by a public opinion survey company (these companies are exempt from the National Do-Not-Call List) they can ask to be put on the do-not-call list of a specific opinion survey company.

Remember that a complaint can be filed because of either a violation of the National Do-Not-Call list, or the individual company do-not-call list.

It is recommended that if your office makes “cold calls” or engages in telemarketing practices, you should also have a company or office telemarketing policy that can be provided to consumers on request.

Canada's DNC legislation requires you to disclose the purpose of your call, and the company or individual you're representing right away. As a result, it is also recommended you have a prepared script for you or your representatives to work from – one that ensures compliance.



The basic rule behind Canada's Do-Not-Call List

If a name and phone number is on a do-not-call list, either yours or the national one, then they should not be called.

WHAT HAPPENS WHEN SOMEONE COMPLAINS?

There will be significant penalties for telemarketers that break the National DNCL rules. Although the CRTC is able to call on a range of sanctions and intends to weigh the severity of each infraction before deciding on a penalty, the rules do give it the power to assess monetary penalties on those who contravene the regulations.

The maximum penalty for each violation is \$1,500 for an individual and \$15,000 for a corporation.

If a consumer receives an unsolicited call and decides to complain, they can file that complaint by calling a toll-free number or by registering on the Do-Not-Call website. The complaint must be filed within 14 days of receiving the telemarketing call. This is to ensure timely investigations.

Once the complaint has been received, the National DNCL operator will make a preliminary assessment to ensure that the complaint is valid. For example, they will check that the



complainant's number is registered on the National DNCL and verify that the call the consumer received violated the basic National DNCL rules.

The complaint will then be sent to the CRTC for a full investigation. The investigator's responsibilities are laid out in Telecom Decision CRTC 2008-6, which is available on the CTRC's website.

Important changes to Decision CRTC 2008-6

The CRTC intends to delegate the investigative responsibilities to a third party, and the regulations provide for a fee schedule to pay the third party.

At the time of publication of this booklet, however, no appropriate candidate has been found to assume the investigative role. Until such a candidate is found, the CRTC will be performing all investigations itself. The requirement to pay fees for investigations has therefore been suspended for the time being.

The full investigation will determine whether a violation has occurred, and whether a penalty should be assessed. At this point, the telemarketer will have an opportunity to present a defence – if, for example, a telemarketer proves that it had taken all reasonable steps to ensure compliance but that a simple mistake resulted in a call to a National DNCL-registered number, then a penalty is unlikely.

It's also important to note that the National DNCL rules do not apply to business-to-business calls. Therefore, people who run businesses out of their homes may still receive business-directed marketing calls even if they're registered with the National DNCL. If the telemarketer proves it had intended to call a business, then the call would not violate National DNCL rules.

In addition to monetary penalties, the CRTC also has the option of issuing warnings for less serious violations or simply meeting with the offending telemarketers. The CRTC expects meetings and warnings to be the most common forms of resolution in the early days after the National DNCL becomes operational, while telemarketers are still becoming accustomed to the new rules.

Due diligence

The legislation permits telemarketers to raise the defense of due diligence if they can establish that:

- the call resulted from an error;
- the company established and implemented adequate written policies and procedures to comply with the rules;
- the company provides adequate ongoing training to its personnel

It will therefore be essential that all realty offices keep detailed records of their activities, and establish and implement office policies to deal with the National DNCL.

The Canadian Real Estate Association has prepared a sample office compliance policy, which is available from the Do-Not-Call Compliance Centre on www.realtorlink.ca.



THE CURRENT CANADIAN TELECOM BILL OF RIGHTS

On August 29th, 2006 the Canadian Radio-Television and Telecommunications Commission (CRTC) issued a public document that restates key consumer rights with respect to local home phone services, in what it hopes is a clear and comprehensible manner. The primary focus of the "Bill of Rights" is to eliminate any confusion surrounding the right to local telephone service, the right to choose a phone company, the right to confidentiality and the right to register a dispute or a complaint. Consumers can see the information printed at the beginning of the white pages telephone directory under "Terms of Service".

Background

The initiative to establish a clear document containing consumer rights was launched in 2003 after it was brought to the CRTC's attention that the terms of service agreements for most telephone companies were often difficult for consumers to comprehend and were not always listed in their entirety in the white pages of most telephone books.

Details of Consumer Rights

There were no new rules in this document and therefore no new impact on REALTORS® or their telemarketing activities. However, with the expected increase in the public's understanding of their current "rights", it is important to note of the existing restrictions on telemarketing, which are spelled out in the new document:

Telemarketing Rules

Subscribing to an unlisted number service or requesting that consumer information be removed from the lists given out by publishers of telephone directories may not be enough to stop unsolicited telephone calls. Other rules do exist to protect consumers from unwanted telemarketing received by means of:

- Automated telephone calls;
- Live calls; and
- Facsimiles.

Consumers have the right to complain to their phone company, or to the CRTC, if a telemarketer does not comply with any of the following telemarketing rules. The telemarketing rules listed below are under review by the CRTC and may be subject to change.

Automated Calls

Automated calls make use of equipment that store and dial telephone numbers automatically and can include a pre-recorded message that is played when the phone is answered. Automated calls cannot be used for the purpose of solicitation. This includes automated calls made on behalf of a charity, calls requesting that you hold until an operator is available, or calls referring you to a 900 or 976 number.

Automated calls are only allowed when there is no attempt to solicit, for example if the call is for public service reasons, for emergency purposes, to collect on an overdue account, or to participate in research. Such calls are only permitted at the following times:

- 9:30 a.m. to 8:00 p.m. on weekdays,
- 10:30 a.m. to 5:00 p.m. on Saturdays, and
- Noon to 5:00 p.m. on Sundays.





There are no hour restrictions, however, if the automated calls are made for public service reasons they must start with a clear message telling you who is calling, including a mailing address and a local or toll-free telephone number.

Automated calls must display the number where the call is coming from or an alternate contact number.

Live Calls

When live telemarketers call consumers, they must identify the person or organization that they represent. The telemarketer must, if you request it, provide the name, address and telephone number of a person whom you can contact. Telemarketers are required to display the number where the call is coming from or an alternate contact number. There are no hour restrictions on live telemarketing calls.

If a consumer does not wish a telemarketer to contact them again, they have the right to request that the telemarketer place their name and number on the telemarketer's do-not-call list. Following this request that name and number must be removed from the telemarketer's calling list within 30 days of the request. Telemarketers are required to maintain the information on their "Do not call" lists for 3 years.

For additional information, please refer to the CRTC Telecom Decision 2006-52, Statement of Consumer Rights. The official documents are accessible through the CRTC website at:

<http://www.crtc.gc.ca/Eng/NEWS/RELEASES/2006/r060829.htm>

MORE INFORMATION

Consumers and telemarketers can both go to the CRTC's DNCL website, or call their toll-free number, for information:

<http://www.LNTE-DNCL.gc.ca> or (866) 580-3625

Information for consumers can be found on the CRTC's website at:

http://www.crtc.gc.ca/eng/INFO_SHT/t1026.htm

Information for telemarketers can be found on the CRTC's website at:

http://www.crtc.gc.ca/eng/INFO_SHT/t1022.htm

To read CRTC Decision 2007-48, outlining the rules framework for unsolicited telecommunications, go to:

<http://www.crtc.gc.ca/archive/ENG/Decisions/2007/dt2007-48.htm>

To read CRTC Decision 2008-6, dealing with the delegation of the Commission's investigative powers, go to:

<http://www.crtc.gc.ca/archive/ENG/Decisions/2008/dt2008-6.htm>

Please also refer to the CREA DNCL Compliance Centre on REALTOR Link®.



Any questions or comments about the service or products CREA provides?
You can contact us on-line at info@crea.ca.

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