

201 CMR: OFFICE OF CONSUMER AFFAIRS  
AND BUSINESS REGULATION

201 CMR 12.00: THE MASSACHUSETTS DO NOT CALL REGISTRY

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12.01: Definitions

Caller Identification Service or Device. A telephone service or device that permits a consumer to see the telephone number of incoming calls.

Consumer. An individual who is a resident of Massachusetts and a prospective recipient of consumer goods or services.

Consumer Goods or Services. An article or service that is purchased, leased, exchanged or received primarily for personal, family or household purposes including, but not limited to, stocks, bonds, mutual funds, annuities and other financial products.

Doing Business in Massachusetts. Conducting telephonic sales calls:

- (a) from a location in Massachusetts; or
- (b) from a location outside of Massachusetts to consumers in Massachusetts.

Do Not Call Registry. A database, maintained by the Office of Consumer Affairs and Business Regulation as otherwise detailed in 201 CMR 12.03 and 12.05, of names and telephone numbers of Massachusetts consumers who have elected not to receive unsolicited telephonic sales calls.

Existing Customer. A residential telephone subscriber with whom the person or entity making a telephonic sales call has maintained an account or had a business relationship within the previous 24 months.

Local Exchange Companies. A corporation, person, partnership or any other organization subject to the Department of Telecommunications and Energy's jurisdiction pursuant to M.G.L. c. 159 providing local exchange service for sale to subscribers, and resellers of such service for public use.

Marketing or Sales Solicitation. The initiation of a telephone call or message to encourage the purchase or rental of, or investment in, property, goods or services, that is transmitted to a consumer, but not including a telephone call or message:

- (a) to a consumer with that consumer's prior express written or verbal invitation or permission;
- (b) by a tax-exempt nonprofit organization;
- (c) by an individual or organization for a noncommercial purpose, such as a poll or survey; or
- (d) to a consumer in response to a visit made by such consumer to an establishment selling, leasing or exchanging consumer goods or services at a fixed location.

Office. The Massachusetts Office of Consumer Affairs and Business Regulation.

Telephonic Sales Call. A call made by a telephone solicitor to a consumer for the purpose of:

- (a) engaging in a marketing or sales solicitation;
- (b) soliciting an extension of credit for consumer goods or services; or
- (c) obtaining information that will or may be used for marketing or sales solicitation or exchange of or extension of credit for consumer goods or services.

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Telephone Solicitor. An individual, association, corporation, partnership, limited partnership, limited liability company or other business entity, or a subsidiary or affiliate thereof, doing business in Massachusetts who makes or causes to be made a telephonic sales call.

Unsolicited Telephonic Sales Call. A telephonic sales call other than a call made:

- (a) in response to an express written or verbal request of the consumer called;
- (b) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of the call;
- (c) to an existing customer unless such customer has stated to the telephone solicitor that such customer no longer wishes to receive the telephonic sales calls of such telephone solicitor; or
- (d) in which the sale of goods and services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the telephone solicitor or a meeting between the telephone solicitor and customer.

12.02: General Telephone Solicitation Regulations

(1) No telephone solicitor shall make or cause to be made an unsolicited telephonic sales call to a consumer if the consumer's name and telephone number appear on the then current quarterly "do not call" registry maintained by the Office of Consumer Affairs and Business Regulation as otherwise detailed within 201 CMR 12.03.

(2) No telephone solicitor shall make or cause to be made an unsolicited telephonic sales call to a consumer between the hours of 8:00 P.M. to 8:00 A.M., local time at the consumer's location.

(3) No telephone solicitor shall make or cause to be made an unsolicited telephonic sales call to a consumer through, by or in the form of electronically transmitted facsimile(s).

(4) No telephone solicitor shall make or cause to be made an unsolicited telephonic sales call to a consumer by the use of a recorded message device.

(5) No telephone solicitor shall use or cause to be installed a blocking device or service to circumvent a consumer's use of a caller identification service or device.

(6) All telephone solicitors engaging in unsolicited telephonic sales calls of Massachusetts consumers must institute procedures for honoring the list of Massachusetts consumers who have elected not to receive unsolicited telephonic sales calls in compliance with M.G.L. c. 159C and 201 CMR 12.00 *et seq.*

(7) All telephone solicitors engaging in unsolicited telephonic sales calls of Massachusetts consumers shall, at the beginning of such call, disclose all of the following information within the first minute of a telephonic sales call and before requesting, accepting or arranging for payment by a consumer:

- (a) that the purpose of the telephone call is to make a sale or solicit funds;
- (b) the correct name of the telemarketing company that employs the individual telemarketer who is making the call;
- (c) the correct name of the ultimate seller whose goods or services are being offered by means of the telemarketing call; and
- (d) a complete and accurate description of the goods or services being offered including, but not limited to, the retail market value of the goods or services.

(8) All telephone solicitors engaging in unsolicited telephonic sales calls of Massachusetts consumers shall provide all of the following information before requesting, accepting or arranging for payment by a consumer:

- (a) the cost to the consumer of the goods or services that are the subject of the telemarketing sales call including, but not limited to, any applicable tax, shipping and handling fees;
- (b) any restrictions, limitations or conditions attached to purchasing the goods or services;

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- (c) the complete terms of any applicable refund, return, cancellation, exchange or repurchase policies; and
- (d) any material aspect of an investment opportunity being offered including, but not limited to, the price of the land or other investment, the location of the investment and the fact that an investor may lose some or all of their original investment.

12.03: Maintaining the Massachusetts Do Not Call Registry

- (1) The Office of Consumer Affairs and Business Regulation shall maintain or cause to be maintained a database of names and telephone numbers of consumers who have elected not to receive unsolicited telephonic sales calls.
- (2) The election by a consumer to be placed upon the do not call registry shall be made in a manner prescribed by the Office.
- (3) A consumer's election shall be valid and shall not expire until such time as the consumer makes a written request for a deletion of the consumer's listing on a form as prescribed by the Office or the consumer changes the telephone number so listed.
- (4) The Office shall update the do not call registry on a quarterly basis each year.
- (5) The Office shall include in the do not call registry the names and telephone numbers of those Massachusetts consumers who enroll in a national do not call database maintained by the Federal Communications Commission, the Federal Trade Commission or any other relevant federal agency maintaining such a database.
- (6) The information contained in the do not call registry shall be protected from public inspection and public disclosure pursuant to M.G.L. c. 159C and the Office will protect the confidentiality of the information in the database in a manner consistent with M.G.L. c. 159C.

12.04: Telephone Solicitor's Access to the Massachusetts Do Not Call Registry

- (1) It is the duty of the telephone solicitor engaging in unsolicited telephonic sales calls of Massachusetts consumers to properly register on an annual basis with the Office. Such telephone solicitors shall submit an application in writing to the Office on or before January 1<sup>st</sup> of each year. The application must contain, but shall not be limited to, the telephone solicitor's name, including aliases, trade names and assumed names, address, telephone number and name of agent and address for service of process, along with a statement from an officer of the company affirming that the company will fully comply with the provisions of M.G.L. c. 159C and 201 CMR 12.00 *et seq.*
- (2) The Office will provide access to properly registered telephone solicitors of the do not call registry of telephone numbers of Massachusetts consumers who have elected not to receive telephone solicitations. Said registry shall be made available in such formats and for such fees as the Office deems advisable. Information contained in the do not call registry shall be used only for the purposes of compliance with M.G.L. c. 159C and 201 CMR 12.00 *et seq.* or relative to an authorized proceeding or action.
- (3) Telephone solicitors engaging in unsolicited telephonic sales calls of Massachusetts consumers must ensure that they have the most recent version of the do not call registry and have an approved registration prior to soliciting any Massachusetts consumers.
- (4) Telephone solicitors engaging in unsolicited telephonic sales calls of Massachusetts consumers shall pay on or before January 1<sup>st</sup> of each year an annual registration fee with the Office which shall cover the period of January 1 to December 31 of that calendar year. Applicants who fail to timely pay the annual registration fee set by the Office shall be deemed to have an incomplete filing, shall not be properly registered and shall not be eligible to receive the applicable do not call registry.

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12.05: Consumer Registration with the Massachusetts Do Not Call Registry

- (1) The Office shall maintain the operation of a do not call registry on which to compile a list of names and telephone numbers of Massachusetts consumers who elect not to receive unsolicited telephonic sales calls. Such registry may be operated by the Office or by any other authorized entity under contract with the Office.
- (2) Massachusetts consumers may enroll in the registry in a manner prescribed by the Office at no cost to the enrolling consumer. Enrollment will become effective 60 days after the appearance of the consumer's listing in the first quarterly registry that is available after the consumer enrolls.
- (3) A Massachusetts consumer who enrolls in the registry will remain validly enrolled in the do not call registry until such time as the enrolled consumer makes a written request for deletion of the applicable listing on a form as prescribed by the Office.
- (4) If an enrolled consumer's listed telephone number changes during the period of enrollment, said change shall operate in the same fashion as a written request for deletion and the consumer will be deemed disenrolled in the registry for that particular telephone number.
- (5) Deletions and disenrollments shall be made within a reasonable time of notice but in no event later than the publication of first quarterly registry that is available 60 days after the date of written request for deletion by the enrolled consumer.
- (6) Business telephone subscribers may not be included in the registry.
- (7) The Office, or its designated representative, may purge the registry periodically to ensure accuracy.

12.06: Public Education about the Massachusetts Do Not Call Registry

- (1) Local exchange companies shall notify their residential telephone customers at least on an annual basis on how to enroll on the registry and about the provisions of M.G.L. c. 159C and 201 CMR 12.00 *et seq.* New residential telephone customers shall be so notified within 60 days after the initiation of service and not less than annually thereafter.
- (2) In addition to the notification required within 201 CMR 12.06(1), White Pages published by local exchange companies or their affiliates shall include information informing Massachusetts residential telephone customers how to be enrolled on the registry and about the provisions of M.G.L. c. 159C and 201 CMR 12.00 *et seq.*

12.07: Miscellaneous

Complaint Investigations and Enforcement. The Attorney General is empowered to investigate and prosecute, in his sole discretion, any allegations of violations of M.G.L. c. 159C.

REGULATORY AUTHORITY

201 CMR 12.00: M.G.L. c. 159C.