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ATTORNEYS AT LAW

CLIENT ADVISORY

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Delaware Valley Residents Welcome 'Do Not Call' Lists

On March 11, 2003, the Do-Not-Call Implementation Act was signed into law, and will become effective as of October 1, 2003. This was the culmination of a lengthy legislative process which began on December 20, 1991 when Congress enacted the Telephone Consumer Protection Act of 1991 ("TCPA"). While the Federal Communications Commission ("FCC") adopted rules in 1992 implementing the TCPA which required companies to maintain do-not-call lists, these rules failed to achieve Congress' goal of eliminating unwanted telephone solicitations. By 1995, legislators began to take notice of the rising tide of support for revamping the FCC rules and seeking greater restrictions on telemarketer activities, leading to the National Do Not Call Registry mandated by the new legislation.

National Do-Not Call Registry

The National Do-Not-Call Registry gives consumers a mechanism to limit the telemarketing calls they receive. Most telemarketers will be required to remove the numbers on the National Registry from their call lists by October 1, 2003. Once a consumer has registered, their number will be posted for telemarketers to remove it from their lists by the following day. Telemarketers then have up to three months to remove the number from their call lists.

How to Register

Consumers can register online at <http://www.donotcall.gov>. Online registration requires an active e-mail address. Consumers can register by telephone at (888) 382 - 1222. To register by telephone, consumers must call from the number that is to be added to the list. Separate calls are required for separate telephone numbers. Registration is free.

The rules adopted by the FCC, in cooperation with the Federal Trade Commission, for the TCPA and the National Do-Not-Call Registry (the "National Registry") impose significant restrictions on telemarketers' activities. These rules are designed to protect individuals' privacy, increase accountability on the part of telemarketers, and help in law enforcement efforts.

Significant Requirements

- Calling times are restricted to the hours between 8 a.m. and 9 p.m.
- Telemarketers must promptly tell you the identity of the seller or charitable organization and, before they make their pitch, whether the call is a sales call or a charitable solicitation.
- Telemarketers must connect their call to a sales representative within two seconds of the consumer's greeting; thereby reducing the number of "dead air" or hang-up calls from telemarketers resulting from their use of automatic dialing equipment that sometimes reaches more numbers than there are available sales representatives.
- A recorded message must play which indicates who is calling and the number they are calling from when the telemarketer does not have a representative available.
- Telemarketers are prohibited from using prerecorded sales pitches.
- Caller ID transmission is required; Beginning January 29, 2004, telemarketers must transmit their telephone number and their name, to your caller ID service.

The Exceptions

Placing your number on the National Registry will stop most telemarketing calls, but not all. Some types of calls are exempt. Political organizations, charities, telephone surveyors, and the business of insurance, to the extent that it is regulated by state law, are permitted to call you.

Organizations with which you have an established business relationship can call you for up to 18 months after your last purchase, payment or delivery - even if your name is on the National Registry. And companies to which you've made an inquiry or submitted an application can call you for three months. However, if you ask a company not to call you it must honor your request regardless of an established business relationship.

If you place your number on the National Registry, you may give written permission to particular companies that you want to hear from. And if you don't put your number on the National Registry you can still prohibit individual telemarketers from calling, one by one, by asking them to put you on their company's do not call list.

New Jersey's Do-Not-Call Registry

On May 15, 2003, the New Jersey Assembly unanimously approved a bill creating a state Do-Not-Call Registry. Governor James E. McGreevey wasted no time in signing the bill into law on May 21, 2003. The new law is viewed as one of the stricter state laws as it even prohibits calls to consumers with whom a company already does business. Under the new law, telemarketers must register with the state, may not block caller ID and face statutory penalties of \$2,000.00 for each violation.

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New Jersey's Do-Not-Call Registry (cont'd)

The law gives the New Jersey Division of Consumer Affairs one year to:

- Adopt regulations.
- Begin registering telemarketers.
- Set up a toll-free number where New Jersey consumers can call to enter a telephone number on the state's "Do Not Call" list, free of charge.

The law covers interstate telemarketing calls (placed to New Jersey phone numbers from other states) and intrastate telemarketing calls (placed to New Jersey phone numbers from a location within the state).

Pennsylvania's Do-Not-Call Registry

Pennsylvania requires every telemarketer that calls consumers in Pennsylvania to purchase its list from the list administrator. The telemarketer must then remove from its calling list every name on the list within 30 days of receiving the list from the list administrator. A violation of the law carries a civil penalty of up to \$1,000, or \$3,000 if the person contacted is age 60 or older.

As with the National Registry, there are exceptions. Pennsylvanians may still receive calls:

- Made in response to a consumer's previous express request.
- In reference to an existing debt, contract, payment or performance.
- When an established business relationship between the consumer and the entity making the call currently exists.
- Made on behalf of a tax-exempt charitable or fraternal organization.
- Made on behalf of a veterans' organization.
- Made on behalf of a political candidate.

Few actions of government have been as welcome as the recent development of the National Registry. With the exception of our Nation's telemarketers, the concept of the National Registry has been met with universal approval.

The following information will help you assert your rights in the context of this sometimes rare confluence of governmental action and constituent demand.

THE NEW JERSEY REGISTRY

New Jersey has not yet enacted rules for implementing its law. However, you can view updates online at <http://www.nj.gov>

THE PENNSYLVANIA REGISTRY

Pennsylvania has not yet enacted rules for implementing its law. However, you can view updates online at <http://www.nocallsplease.com>.

Questions? Please contact Thomas Herdelin, Esquire at 856-616-2608 or therdelin@archerlaw.com.

Archer & Greiner's Commercial Collections and Consumer Litigation Practice Group advises individuals regarding various issues, including the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and consumer protection statutes. We have assisted our clients with such matters as defending improper collection efforts to correcting credit reporting information to assisting with claims involving abusive business practices. For more information, visit www.archerlaw.com.