

CREA
THE CANADIAN REAL
ESTATE ASSOCIATION



Creating an office policy for the **Do Not Call Registry**



Table of contents

- A. Introduction..... 1**
 - The Due Diligence Defence1
 - Process.....1
- B. Steps To Developing Office Policy 2-3**
 - Establish Commitment2
 - Conduct an Audit.....2
 - Draft Office Policy.....2
 - Educate Staff and Salespeople.....3
 - Monitor Effectiveness of Procedures3
- C. Developing the Office Policy 4-13**
 - General Policy Statement4
 - The Person in Charge5
 - Restriction on Telecommunications5
 - Registration with Do Not Call Operator6
 - Use of National Do Not Call List.....7
 - Internal Do Not Call Lists8
 - Documenting Each Call.....9
 - Contact List and Exemptions10
 - Record Keeping11
 - General Telemarketing Rules.....12
 - Training and Monitoring..... 13

Introduction

All Broker offices must develop and implement office policies to conform to the requirements of the **Do Not Call Rules** (the “DNC Rules”).

The Due Diligence Defence

The DNC Rules themselves do not state that office policies must be in place. However, they do create a “due diligence” defence for telemarketers that inadvertently call a telephone number on the National Do Not Call List (the “DNCL”).

In order to rely on this defence, the telemarketer must be able to prove that:

1. The call was made in error
(as opposed to a deliberate attempt to circumvent the Rules);
2. Routine practice in the office includes:
 - written policies;
 - adequate on-going training, and
 - regular monitoring of activities and procedures.

Therefore, if a call is made to a consumer on the DNCL, the firm will not be able to put forward a due diligence defence unless an office policy is in place, all employees and salespersons are trained on what to do and what not to do, and office operations are regularly monitored for DNC compliance. The net result is that Do Not Call office policies are an essential element of proper risk management.

Process

Creating a DNC office policy for a realty firm requires thought and planning that should involve everyone in the firm, and possibly the company’s legal counsel.

There are no cookie-cutter solutions to drafting these policies. Each policy must be customized to reflect the actual practices within the office. A policy that works well for a two person office will not be effective for a 200-person office. It all depends on the internal office structure, the reporting lines, and the established communication protocols:

- Are there different departments within the firm?
- How do they interact?
- Who answers the phones?
- What does the organizational chart look like?
- Is there a management team?
- Etc.

All of these questions and many more determine what the final office policy will look like.

What follows, is a suggested process to consider in developing office policies.

Steps to Developing Office Policy

Developing an effective office policy involves more than simply printing out a form. Cutting and pasting into your office policy manual will not accomplish the goal. At a minimum, the following steps must be followed:

1. **Establish commitment**
2. **Conduct an audit**
3. **Draft office policy**
4. **Educate staff and salespeople**
5. **Monitor effectiveness of procedures**

Establish Commitment

Staff and salespersons need to understand what the DNC Rules are, how they affect the brokerage business, how they are specifically applied in the office, and the importance of having and following established procedures.

The salespeople are making the calls. They must understand the rules that apply to those calls. The staff persons are the front-line personnel taking the calls and responding to consumer inquiries and complaints. They must be able to provide some kind of answer or direction. At the very least they must know where to forward the call. Otherwise, the firm not only appears ineffective to its customers, but also leaves itself open to potential liability under the DNC Rules.

Conduct an Audit

Once a buy-in to the concept has been achieved, the next step is to understand what the DNC Rules themselves require. Then you must look at how your office operates and what needs to be put in place to make those processes compliant with the DNC Rules. Some of the things to consider include:

- How many salespeople in the office make unsolicited calls to consumers?
- Which consumers are targeted?
- How are contact lists generated?
- How should salespersons and employees be involved in the compliance process?
- What are the lines of communication and responsibility between staff persons?
- Is an internal office Do Not Call list being maintained?
- Do the salespeople and staff know the CRTC telecommunication rules, and are they being followed?

Draft Office Policy

Once the audit has been completed, there should be a fairly clear understanding of the office processes themselves. The next step is to draft a policy that applies the DNC requirements to those processes. The office policy must reflect the specific requirements of the CRTC's Unsolicited Telecommunications Rules. These rules include:

- Rules governing the operation of the National Do Not Call List; and
- General rules and restrictions on telemarketing.

There are separate and distinct requirements under each, and the office policy must cover all aspects of complying with both sets of rules.

Steps to Developing Office Policy

Educate Staff and Salespeople

All the pieces of paper in the world are useless if no one reads or understands them. There is a specific obligation on companies to ensure their people are properly educated. Once the policy is in place, all staff and salespersons need to be trained. The policy will contain specific ways of doing things, together with the lines of authority and approvals. Everyone involved with the office must understand. If an office policy exists, but there is no training, the due diligence defence cannot be relied on.

Monitor Effectiveness of Procedures

An office policy needs to be a living document, capable of adapting to new circumstances. A procedure that seems fine in theory may be put in place to deal with a legal requirement.

When implemented, however, it may prove to be ineffective. There must be regular assessments of how well the processes are actually working. This is good risk management in any case, but is particularly important when dealing with the DNC Rules, because the due diligence defence requires that the office policy be monitored and enforced.

Steps to Developing Office Policy

Key Elements

The key elements of a DNC office policy are as follows:

1. **General Policy Statement**
2. **The Person in Charge**
3. **Restriction on Telecommunications**
4. **Registration with DNC Operator**
5. **Use of National Do Not Call List**
6. **Internal Do Not Call Lists**
7. **Documenting Each Call**
8. **Contact List and Exemptions**
9. **Record Keeping**
10. **General Telemarketing Rules**
11. **Training and Monitoring**

1. General Policy Statement

The purpose of the policy statement is to confirm to consumers that the firm cares about their “right to be left alone” and has taken steps to protect it. It sets the foundation for the balance of the office policy and could also be used as the basis for firm advertising.

SAMPLE WORDING

1. Statement of Policy

This office respects the right of consumers to elect not to be contacted for marketing purposes. All employees and sales representatives associated with this office abide by the provisions of the Telecommunications Act, and in particular, the Unsolicited Telecommunications Rules (referred to throughout this policy as the “DNC Rules”).

NOTE:

A realty firm may decide that it will not be involved in telemarketing activities at all. In that case, it is not a “telemarketer” within the meaning of the Telecommunications Act, and does not have to take all of these steps. An office policy for such a firm would have to state very clearly that none of the salespersons are permitted to make unsolicited calls to consumers for the purposes of selling their services.

Steps to Developing Office Policy

2. The Person in Charge

The DNC Rules do not specifically state that someone must be “put in charge”. However, they do require that consumers must, on request, be provided with the name and contact information of the person in the office who is responsible for DNC compliance. As that obligation exists, the office policy should make it clear who that person is.

SAMPLE WORDING

2. The Person in Charge

- (i) _____ (person/position) is the Do Not Call Compliance Officer in this office. On request, his/her name and contact information shall be made available to consumers who have inquiries or complaints regarding the Do Not Call policies of this office.
- (ii) The Do Not Call Compliance Officer is responsible for establishing, monitoring and updating the office Do Not Call policies, as well as ongoing training for staff and salespeople.

NOTE:

- (i) In most firms, there will be an individual who is responsible for the internal operation of the organization. That is the person who will likely fill this role. Generally, it is not advisable to divide up the various areas of responsibility under the office policies any more than is absolutely necessary. The person who is, for example, designated as the Privacy Compliance Officer under PIPEDA would be the most logical person to also fill this position.
- (ii) An office may prefer to expand on the specific duties of the Do Not Call Compliance Officer to clarify the obligations.
- (iii) Staff and sales representatives need to know that the Compliance Officer is the person in charge when it comes to DNC and they are to defer to that person’s authority.

3. Restriction on Telecommunications

The office policy should state the core principle underlying the DNC Rules – namely that you cannot call or fax a number on the National DNC List.

SAMPLE WORDING

3. Restriction on Telecommunications

Except as provided in this policy, no unsolicited telecommunications (phone calls or faxes) for the purposes of marketing, may be made to any phone number registered on the National Do Not Call List. Under no circumstances may such calls be made or faxes sent to numbers on the office Internal Do Not Call List.

NOTE:

- (i) There are a number of exemptions to calling that exist in the DNC Rules. Some of those may be utilized by realty firms to make telemarketing calls in spite of the fact that the number is on the National DNC list. However, there are no exemptions for numbers on an internal DNC List.
- (ii) The Telecommunications Act, and therefore the DNC Rules, apply only to phone and fax. They do not apply to e-mail, regular mail or other forms of contact.

Steps to Developing Office Policy

4. Registration with the DNC Operator

The DNC Rules contain a number of initial requirements that need to be reflected in office policies:

- (i) Telemarketers must register with the DNC Operator and pay the relevant subscription fees;
- (ii) No telemarketing calls can be made unless and until this process has been completed; and
- (iii) There are flexible options for buying the DNC list. Telemarketers can buy a list containing as many as all Canadian area codes or as few as one. The list can be purchased for a term of one year, one month or three months.

SAMPLE WORDING

4. Registration With the DNC Operator

- (i) The DNC Compliance Officer shall take the necessary steps to register the firm with the DNC Operator, and pay required subscription fees.
- (ii) The DNC Compliance Officer shall, at his/her discretion, determine the area codes and the length of subscription to be ordered.

NOTE:

- (i) The actual process will depend on the nature of the firm's operations.
- (ii) What area codes and length of subscription to order should be determined during the audit process, based on the nature of the firm's business activities? If all telemarketing takes place within one or two area codes, then those are the only ones that need to be ordered. If telemarketing is "seasonal" - for example, only done during the spring market - then a three-month subscription may suffice. If that is the case, the office policies must set that out clearly and prohibit telemarketing during any other periods.

Steps to Developing Office Policy

5. Use of the National Do Not Call List

Once an office has subscribed to the National DNC List, it must be handled in accordance with the DNC Rules. The National DNC List should immediately upon receipt or upon updating be compared to the office contact list. Any names on the contact list that are not subject to one of the exemptions must be removed.

The two most important restrictions on the use of the DNCL are these:

1. The list must only be used to comply with the DNC Rules, and must not be used for any other purpose.
2. One list can be used by all of the employees and salespeople in a particular office, but it cannot be sold, leased or shared with any third party, including affiliates, in any way. Your office policy should reflect these restrictions.

SAMPLE WORDING

5. Use of National Do Not Call List (DNCL)

- (i) The DNCL is a confidential document and is to be used only for the purposes of complying with the DNC Rules. It cannot be sold, rented, leased, published or disclosed in any manner to any other person or organization.
- (ii) The Do Not Call Compliance Officer must ensure that the DNCL is updated at least every _____ days.
- (iii) Within 12 hours of receipt of an updated DNCL, and in any case, at least once every _____ days, the Do Not Call Compliance Officer shall compare it to the office contact list and remove from the contact list any number that appears on the DNCL, unless that number is the subject of a verified exemption.

NOTE:

- (i) According to the DNC Rules, one entity is affiliated with another "...if one of them is controlled by the other or if both are controlled by the same person." The result is that – as an example - three offices, owned by separate companies, but operated by the same person or some of the same persons would be "affiliates" and each office needs to subscribe and buy the DNC List. However, three offices owned by the same "entity" –i.e. person, persons or company, would likely be considered branch offices of the one organization, which would allow sharing of the lists.
- (ii) The restriction on sharing the DNC List does not apply to situations where the realty firm hires a third party to assist in telemarketing or maintaining the list.
- (iii) The DNC Rules require that the National DNC List be updated at least once every 31 days. Your policy must ensure that this time frame is respected as a minimum. If possible, it would be better to provide for more frequent updating.
- (iv) Systems must be in place to ensure that the DNCL is continually in use by office personnel, and that it is regularly updated. An automated "tickler reminder system" is recommended
- (v) Specific duties such as updating the list may be delegated. However, the office policy should be clear on whom that person is, how often the list is updated, and the reporting procedures to be put in place to guard against failing to update.

Developing the Office Policy

6. Internal Do Not Call List

All offices are required to create and maintain internal do not call lists that contain the phone numbers of individuals who have requested not to receive any further phone calls or faxes from your company. This requirement is not new. It has existed in the legislation for years. However, given the new regime, this obligation has taken on an increased importance. An internal do not call list is an essential element of all office policies.

SAMPLE WORDING

6. Internal Do Not Call List (IDNCL)

- (i) A request by a consumer not to be contacted by this office for the purposes of solicitation must be respected.
- (ii) When a consumer makes such a request, a “Do Not Call Request” Form shall immediately be completed by the office representative to whom the request is made, and provided to the DNC Compliance Officer no later than the next business day (Saturdays, Sundays and statutory holidays excepted).
- (iii) The DNC Compliance Officer shall, within _____ hours of receipt of the Form, add the name and telephone number to the IDNCL, as well as the date of the entry.
- (iv) All numbers must be kept on the IDNCL for a minimum of three (3) years and fourteen (14) days from the date of entry.
- (v) The IDNCL is accessible to all staff and salespersons (state how the list is accessed)
- (vi) No unsolicited phone calls or faxes for the purposes of solicitation may be made to any numbers on the IDNCL.

NOTE:

- (i) The DNC Rules require that a consumer’s number be placed on the internal do not call list within 14 days of the date of the request. However, most organizations are able to respond much faster, and the deadline for entering the number on an office IDNCL should be as soon as possible, taking into account the office procedures.
- (ii) It is recommended that a standard form be created by the office to record the do not call request. That way, consistent information is supplied, and a record of the request is available.
- (iii) If no standard form is used, the office policy must clearly set out the required information that must be recorded. The name, number, and date and time of request are essential. The policy must also provide that the request be recorded and kept.
- (iv) A centralized system must be part of the office processes. Everyone should know who is ultimately responsible for the maintenance of the IDNCL, what to do if a request is made, and how to access the centralized IDNCL.
- (v) An IDNCL of one office will not apply to “affiliates”. So the affiliate will maintain its own list. However, it will apply to “branch offices” that do not fit within the “affiliate” umbrella. Therefore, a brokerage with branch offices will have to maintain a system that is centralized and accessible for all branches.
- (vi) There can be no cost to the consumer for this service.

Developing the Office Policy

7. Documenting Each Call

SAMPLE WORDING

7. Documenting Each Call

- (i) Prior to making an unsolicited telecommunication (telephone or fax) for marketing purposes, each sales representative shall check the proposed number against both the DNCL and the IDNCL not more than 12 hours prior to making the call.
- (ii) Immediately following the communication, the sales representative shall complete the “Telemarketing Record” Form, and shall, within 24 hours, provide it to the Do Not Call Compliance Officer, who will file it appropriately.

NOTE:

There is no specific requirement in the DNC Rules to create and maintain records about each call made. However, in the event of a complaint, it is the responsibility of the company to prove that the telemarketer checked the DNCL and (if applicable) the IDNCL before making the call. It is therefore essential risk management practice to require in the office policies that records be kept of the details of each telemarketing call. A standard form is recommended. In the absence of such a form, the policies should be clear that the written record must include the number, time, date, and the fact that the DNCL and the IDNCL were checked prior to the call.

Developing the Office Policy

8. Contact Lists and Exemptions

The DNC Rules contain a number of exemptions, three of which are relevant to real estate companies.

1. Business to Business calls – business phone numbers are not covered by the DNC Rules. Telemarketing calls may be made to these numbers.
2. Consent – telemarketing calls may be made to individuals who are registered on the DNCL if they have given the office their express and explicit consent to call or fax.
3. Existing Business Relationship – telemarketing calls may be made to individuals who are registered on the DNCL if the office has an existing business relationship with those individuals. An “existing business relationship” is one where a consumer has:
 - (i) purchased/leased a product or service from the company within the last 18 months;
 - (ii) entered into some other written agreement with the company that expired in the last 18 months; and
 - (iii) made an inquiry of the company within the last six months.

Companies may want to consider creating internal contact lists that contain the names of those individuals who fit into any of the exempt categories. Sales representatives should be trained to understand how the exemptions work, and to check those lists before making any telemarketing calls.

SAMPLE WORDING

8. Contact List and Exemptions

- (i) The names of those individuals falling into the exemptions under the DNC Rules shall be maintained in an office contact list.
- (ii) Each salesperson shall complete a Contact List Form and provide it to the Do Not Call Compliance Officer within 48 hours of (a) providing the service, (b) receiving the consent or (c) responding to an inquiry.
- (iii) If the basis of the exemption is consent, that consent must be in written or electronic form and specifically permit contact by telephone or fax. A general consent to contact is not valid.
- (iv) The Do Not Call Compliance Officer shall, within _____ hours of receiving the Form, add to the office contact list the name, telephone number, basis of exemption, date exemption began and, if applicable, the expiry date of the exemption.
- (v) The contact list is accessible to all staff and salespersons _____ (state how list accessed).

NOTE:

- (i) There is no specific requirement under the DNC Rules to maintain a contact list. A company may choose not to maintain such a list.
- (ii) If a list is being maintained, the firm will have to decide how to monitor and maintain it. A salesperson may be reluctant to put his or her client’s name on an office contact list. A system may be put in place where only the salesperson that inputted the name may access it. Or, perhaps each salesperson would maintain his/ her own individual contact lists. However, the office would need a system to monitor these lists, which might be difficult.
- (iii) Systems must be in place to ensure that the contact list is regularly updated. An automated “tickler reminder system” is recommended.
- (iv) Consent is only valid if it is specific to phone or fax. A general consent to contact is not acceptable. Companies should review their materials to ensure, for example, that open house forms or other applications contain specific consent to phone.

Developing the Office Policy

9. Record Keeping

The DNC Rules specifically require the following records to be kept, each for a period of three years:

1. Proof of Subscription; and
2. Proof of payment of Complaint Investigation Fee.

However, because the onus is on the telemarketer to prove that the DNC Rules were complied with in each and every case, every step should be documented and records should be kept. Consumers only have 14 days to file a complaint, but the CRTC has three years to commence action. It is suggested that all documents relating to calls made be retained for three years.

SAMPLE WORDING

9. Record Keeping Requirements

- (i) All records relating to DNC compliance under these policies shall be kept for a period of 3 years from their date of creation. Those records include, but are not limited to:
 - (a) Proof of Subscription to DNCL;
 - (b) Proof of Payment of Complaint Investigation Fee;
 - (c) Do Not Call Request Form;
 - (d) Telemarketing Record Form; and
 - (e) Contact List Form.
- (ii) All records may be kept in either printed or electronic format.
- (iii) All records must be kept at _____ (address of office or head office) and be easily accessible.
- (iv) Any requests from third parties to access these records must be referred to the Do Not call Compliance Officer.

Developing the Office Policy

10. General Telemarketing Rules

The Unsolicited Telecommunications Rules contain a number of restrictions on how and when telemarketing calls can be made, and the content of those calls. Office policies must reflect these Rules.

SAMPLE WORDING

10. General Telemarketing Rules

All unsolicited telecommunications for marketing purposes made by representatives of this office must comply with the following rules:

(a) Hours

Communications may only be made during the following hours (based on the time zone of the consumer):

9 a.m. - 9:30 p.m. (weekdays)

10:00 a.m. - 6:00 p.m. (weekends)

(b) Content

A consumer, on answering the phone, must immediately be advised of:

- (i) the name of the sales representative;
- (ii) the name of this office;
- (iii) the purpose of the call.

(c) Call Display

Sales representatives cannot block the phone number of this office or their own phone number if the call is made from a location other than this office.

(d) Faxes

- (i) This policy applies equally to faxes.
- (ii) Additionally, faxes must contain the following information at the top of the first page in a font size of at least 12:
 - _____ (company name and address or email address)
 - _____ (sales representative name)
 - Originating date and time of the fax
- (iii) the fax must also indicate the toll-free phone and fax number for this office.

(e) Inquiries/Complaints

- (i) Consumers may contact this office with DNC inquiries by calling _____ (phone number) locally or 1-800-_____ if long distance. There will be no cost to the consumer for this call.
- (ii) Any questions or concerns relating to the DNC policy of this office are to be directed to the Do Not Call Compliance Officer. In the event he/she is not available, the consumer shall be advised that the Do Not Call Compliance Officer will return the call in no later than _____ days (not to exceed 3).
- (iii) If the call is received outside of normal working hours, a recorded voice message must advise the consumer that someone will return their call no later than _____ days (not to exceed 3).

Developing the Office Policy

NOTE:

- (i) Consumers must be able to call at no cost. If the particular realty office only markets within its area code or within an area where no long distance charges apply, then a local number is satisfactory. If the marketing activities occur beyond that range, then the office must have a toll-free number that consumers can call.
- (ii) The DNC Rules require that telemarketers respond to consumer inquiries within three days. In most circumstances, however, offices do not need that much time. Most consumers would not consider three days to be an acceptable turn-around time. Offices are therefore encouraged to develop policies that call for a response time of hours rather than days.

11. Training and Monitoring

The due diligence defence requires not only that the policy be in place, but that it be monitored regularly and that all personnel be trained. Your policy should provide for those processes.

SAMPLE WORDING

11. Training and Monitoring

- (i) All staff and sales representatives shall receive training on the office DNC policies within one week of commencing employment. Ongoing education will be required once a year thereafter.
- (ii) The effectiveness of this policy will be monitored, and the policy may be amended from time to time, as required.
- (iv) Any requests from third parties to access these records must be referred to the Do Not call Compliance Officer.

NOTE:

- (i) The policy should be reviewed at least every six months to determine whether any fine tuning is necessary.
- (ii) Staff and sales representatives should be encouraged to comment on any aspects of the procedures that are not working.



200 Catherine Street, 6th Floor
Ottawa, ON K2P 2K9
Tel.: 613.237.7111
CREA.ca

The trademarks MLS®, Multiple Listing Service® and the associated logos are owned by The Canadian Real Estate Association (CREA) and identify the quality of services provided by real estate professionals who are members of CREA. The trademarks REALTOR®, REALTORS® and the REALTOR® logo are controlled by CREA and identify real estate professionals who are members of CREA.

© Copyright The Canadian Real Estate Association 2010-2023