



CALLED OFF

HOW NEW "DO-NOT-CALL"
TELEMARKETING STATUTES MAY
IMPACT RENTAL DEALERS



Rental dealers market their products and services in a variety of ways. A few make cold calls to consumers, but it is more frequently the case that dealers will make a marketing pitch when calling personal references on a rental order or will pull files and call old customers to see if they want to come in and rent something again. The "do-not-call" statutes that are popping up all over the country may affect all of these marketing behaviors. These statutes are not aimed at rental dealers, but the broad language in the acts may inadvertently pick up some rental dealer conduct within their sweep. The issue has become a popular legislative target and so far 20 states have enacted "do-not-call" statutes with more almost certainly on the way. [See list in sidebar on the following page.]

BY ED WINN III

IT HAS ALMOST BECOME A NATIONAL JOKE—the family sitting down to dinner only to be interrupted repeatedly by unsolicited telemarketing calls. Only the joke wasn't funny to the family being interrupted and so the government has stepped in to regulate the telemarketing industry. What follows is a survey of existing legislation to date and its impact on the rental industry, but dealers are cautioned that a number of states not listed are considering legislation and there is a federal "do-not-call" bill pending that may pass this year.

In 1991, the Federal Communications Commission began to enforce the Telephone Consumers Protection Act. This Act and the 1995 Telemarketing Sales Rule adopted by the Federal Trade Commission required telemarketing companies to establish internal do-not-call lists. Consumers may request to be put on the list and the companies must maintain the lists, make their policies available upon request and train their employees not to call people on the lists.

The federal statute specifically regulates the use of automatic tele-

- Telephone companies
- Real estate agents and brokers
- Motor vehicle dealers
- Insurance agents
- Funeral homes

However, no state excludes rental dealers. There are other exceptions in most states that will cover most marketing calls that rental dealers make, but not all. All states have an existing-business-relationship exception that allows a merchant to call consumers with whom an ongoing business relationship exists, at least until the consumer instructs the merchant not to call any more. In some states, this notice must be in writing to be effective.

and thus there may no longer be any "existing business" relationship.

A number of states also allow calls to consumers on the "do-not-call" list if there has been a prior business relationship for a period of time after the existing business relationship has been terminated. Those states are as follows:

- Alabama: Any prior business relationship
- Alaska: 24 months
- Arkansas: 36 months
- Colorado: 18 months
- Connecticut: Any pre-existing business relationship
- Florida: Any prior business relationship
- Georgia: Any prior business relationship
- Kentucky: Any prior business relationship
- Louisiana: Six months
- Missouri: Six months
- Oregon: Any previous purchasers
- Tennessee: 12 months
- Texas: 12 months

Another important exception in some states is the "come on down" exception. Rental dealers in Alabama, Indiana, Ken-

tucky, New York and Oregon can call consumers on the "do-not-call" list and invite them to come to the store to rent something. What they cannot do is to attempt to close a transaction on the phone. Rental dealers cannot call "with the intent of completing or obtaining the provisional acceptance of a sale (or rental)."

Most state "do-not-call" statutes apply to solicitations of sales, rentals, leases, extensions of credit or any other transaction involving the exchange of consideration for goods or services. A few state statutes, however, only apply to sale or purchase solicitations: Alaska, Florida, Idaho, Kentucky, Oregon, Texas, Wisconsin and Wyoming.

In these states, the "do-not-call" statutes may not apply to rental dealers. That would be the case if those statutes were read literally, which is how they should be read since they punish certain conduct.

However, rental dealers must ask themselves whether this is an argument they want to make and then have to confront the reason these statutes likely were enacted—the legislative intent—which was to allow consumers the means to stop those pesky unsolicited telephone calls at dinnertime and not, presumably, just the calls trying to sell something. Judges can and do consider the legislative intent when interpreting a statute.

Finally, rental dealers should be aware of what these "do-not-call" statutes do not do. None attempt to interfere with existing business relationships and most go on to clarify that the "do-not-call" lists do not protect consumers from calls by merchants or others "in connection with an existing debt or contractual obligation, payment or performance of which has not been completed at the time of such call." (Ark. Consumer Telephone Privacy Act, Sec. 3(b).)

All of the "do-not-call" statutes are intended to protect consumers from unwanted telephone solicitations. They are not intended to protect consumers from any lawful collection efforts by rental dealers or others.

"Do-not-call" statutes have proliferated in the past few years over the strenuous objections of telemarketing companies that have argued unsuccessfully that their business gives consumers a lot of useful information in an efficient and timely manner. The rental industry has only lately learned of the possible impact of these new statutes on the marketing practices of some rental dealers.

Rental dealers in states without "do-not-call" legislation may want to see whether bills are pending in their states. If so, they should find out if they can get a rental-purchase exclusion allowing dealers to market to references and, perhaps, other consumers they want to call. Dealers in states with "do-not-call" statutes already in place will want to review the applicable statutes and their own current marketing practices to ensure compliance. Copies of the state "do-not-call" statutes are available to APRO members through the APRO office. ■

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RENTAL DEALERS IN STATES WITHOUT "DO-NOT-CALL"

LEGISLATION MAY WANT TO SEE WHETHER BILLS ARE PENDING IN THEIR STATES. IF SO, THEY SHOULD FIND OUT IF THEY CAN GET A RENTAL-PURCHASE EXCLUSION ALLOWING DEALERS TO MARKET TO REFERENCES AND, PERHAPS, OTHER CONSUMERS THEY WANT TO CALL.

phone dialing systems. If any dealers are using such machines, they are subject to this Act. Far more likely, however, is coverage under one of the state "do-not-call" statutes. These laws differ in their particulars, but generally create statewide "do-not-call" lists to which any consumer with a telephone in the state can subscribe.

There are various procedures for getting on the list, but the states have made the process easy. There is a nominal charge to consumers—a few dollars—to be listed. The lists are most often updated quarterly and a consumer's name and number stay on the list for a few years before the subscription must be renewed. The statutes then provide that merchants who want to market their products and services on the telephone must purchase the list periodically and implement policies to ensure that they do not call people who are listed. Calling consumers on the "do-not-call" list subjects merchants to fines and penalties.

Other than establishing an overall framework for creating "do-not-call" lists, the state statutes show little uniformity. Numerous exemptions have carved out whole industries in different states, seemingly dependent upon which lobby group was in town when the bill was pending. Most states exclude calls seeking religious, political, educational or charitable contributions. The following industries are exempt in one or more of the states that have enacted "do-not-call" statutes:

- Newspapers, magazines and other periodicals
- Cable TV subscription services
- Licensed securities and commodities brokers and dealers
- Book and video clubs with negative check-off options
- Banks and other "supervised financial institutions"

This exclusion will cover all existing rental customers, but may go beyond that.

State rental-purchase laws have created reinstatement rights that arguably extend the business relationship between a dealer and a customer at least until the end of the statutorily mandated reinstatement period, even though the rental agreement has been terminated. Rental companies with longer reinstatement periods than are required by law (e.g., RentWay's "Lifetime" reinstatement program) may have an even longer existing business relationship, although several states have language excluding only a business relationship that "has not been terminated by either party." Has a customer who has returned the rental property terminated the business relationship notwithstanding ongoing statutory or contractual reinstatement rights?

Related issues may involve the circumstances of the termination. A customer who returns rental property after it is "too late" under the rental-purchase statute may have forfeited all reinstatement rights

STATUTORY/REGULATORY CITATIONS—STATE BY STATE

- Alabama: Ala. Code §8-19A-3
- Alaska: Alaska Stat. §45.50.475
- Arkansas: Ark. Stat. Ann. Code §4-99-404
- California: Cal. Civ. Code §17590
- Colorado: Col. Rev. Stat. §6-1-901
- Connecticut: Conn. Gen. Stat. §42-288a
- Florida: Fla. Stat. §501-059
- Georgia: Ga. Code Ann. §46-5-27
- Idaho: Idaho Code §48-1003A
- Indiana: Ind. Code Ann. §24-4.7
- Kentucky: Ky. Rev. Stat. §367.46955
- Louisiana: La. Rev. Stat. Ann. §45:844.11-15
- Maine: Me. Rev. Stat. Ann. Tit. Ch. 128 §14716
- Missouri: Mo. Rev. Stat. §407.1098; §407-1101
- New York: N.Y. Gen. Bus. Law §399-z
- Oregon: Or. Rev. Stat. §646.574
- Tennessee: Tenn. Code Ann. §65-4-405
- Texas: Tex. Bus. & Comm. Code §43.001
- Wisconsin: Wisc. Stat. Ann. §100.52
- Wyoming: Wyo. Stat. §40-12-301