

CHAPTER 45D**TELEMARKETING: DO NOT CALL****Authority**

N.J.S.A. 56:8-119 et seq., specifically 56:8-134.

Source and Effective Date

R.2009 d.274, effective August 13, 2009.
See: 41 N.J.R. 2209(a), 41 N.J.R. 3308(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 45D, Telemarketing: Do Not Call, expires on August 13, 2016. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 45D, Telemarketing: Do Not Call, was adopted as R.2004 d.196, effective May 17, 2004. See: 36 N.J.R. 610(a), 36 N.J.R. 2546(a).

Chapter 45D, Telemarketing: Do Not Call, was readopted as R.2009 d.274, effective August 13, 2009. As a part of R.2009 d.274, Subchapter 2, Bidder Qualifications; No Telemarketing Call List, was renamed No Telemarketing Call List, effective September 8, 2009. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS**13:45D-1.1 Purpose**

The rules in this chapter implement the provisions of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. as amended by P.L. 2003, c.76 (N.J.S.A. 56:8-119 et seq.) by providing procedures for the regulation of telemarketers and establishing standards to facilitate enforcement of the requirements of the Act. The rules establish the Division's no telemarketing call list by recognizing the telephone numbers of New Jersey customers on the National Do Not Call Registry established by the Federal Trade Commission or any other successive telemarketing registry created by the Federal government or any telemarketing registry established by the Division as the Division's no telemarketing call list.

13:45D-1.2 Scope

These rules apply to telemarketers who make residential telemarketing sales calls to New Jersey customers and provide those who do not wish to receive unsolicited telemarketing sales calls a procedure to limit or eliminate such calls.

13:45D-1.3 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless their context clearly indicates otherwise:

“Act” means the Telemarketing Do Not Call law, N.J.S.A. 56:8-119 et seq.

“Applicant” means the entity which will be making telemarketing sales calls and each officer, director, principal and owner of the entity.

“Commercial mobile service” means a telephone that operates without a physical, wireline connection to the provider's equipment. The term includes, without limitation, cellular and wireless telephones.

“Continuing services” means the performance of work, the provision of medical care or other professional services or the affording of access to a utility, typically provided to an established customer on a recurring basis.

“Customer” means an individual who is a resident of New Jersey and a prospective recipient of a telemarketing sales call to a New Jersey telephone number.

“Director” means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

“Established customer” means a customer for whom a seller has previously provided continuing services where the relationship has not been affirmatively or constructively terminated.

“Existing customer” means:

1. A person who is obligated to make payments to a seller on merchandise purchased; or

2. A person who has entered into a written contract with a seller where there is an obligation to perform, either by the customer, seller, or both.

“Isolated call” means one unsolicited telemarketing sales call made to a single customer in a 12-month period.

“Merchandise” means any object, ware, good, commodity, service or anything offered, directly or indirectly, to the public for sale, including an extension of credit.

“No telemarketing call list” means the telephone numbers of New Jersey customers who have registered for the National Do Not Call Registry created and maintained by the Federal Trade Commission pursuant to the Telemarketing Sales Rule (16 CFR 310) or any other successive telemarketing registry created by the Federal government or any telemarketing registry established by the State.

“Plan, program or campaign” means any coordinated telemarketing solicitation.

“Seller” means any person who, in connection with a telemarketing transaction, provides or offers to provide merchandise to the customer in exchange for consideration.

“Simultaneous outgoing call capacity” means the number of outgoing telephone calls that a telemarketer has the technological capability to make at the same time, whether or not the telemarketer has the personnel to actually make the calls.

“Telemarketer” means any entity who makes residential telemarketing sales calls to a customer when the customer is in New Jersey, whether the entity is an individual proprietor, corporation, partnership, limited liability corporation or any other form of business organization, or if not formally organized, any person who directly controls or supervises the making of residential telemarketing sales calls whether on behalf of itself or others.

“Telemarketing” means any plan, program or campaign which is conducted by telephone to encourage the purchase or rental of, or investment in, merchandise, but does not include the solicitation of sales through media other than a telephone call.

“Telemarketing sales call” means a telephone call made by a telemarketer to a customer as part of a plan, program or campaign to encourage the purchase or rental of, or investment in, merchandise, except for continuing services. A telephone call made to an existing customer for the sole purpose of collecting on accounts or following up on contractual obligations shall not be deemed a telemarketing sales call.

“Unsolicited telemarketing sales call” means any telemarketing sales call other than a call made:

1. In response to an express written request of the customer called; or
2. To an existing customer.

Amended by R.2008 d.136, effective June 2, 2008.

See: 39 N.J.R. 5057(a), 40 N.J.R. 3321(a).

Added definition “Simultaneous outgoing call capacity”.

13:45D-1.4 Fees; no telemarketing call list

(a) The Division shall charge the following telemarketer registration fees:

1. Simultaneous outgoing call capacity of one to five telemarketing sales calls..... \$150.00;
2. Simultaneous outgoing call capacity of six to 15 telemarketing sales calls..... \$500.00;
3. Simultaneous outgoing call capacity of 16 or more telemarketing sales calls \$2,000.

(b) If, in the future, the Division does not use the Federal Do Not Call Registry and establishes its own no telemarketing call list, the list shall be distributed to registered telemarketers quarterly as part of their registration fee.

Amended by R.2008 d.136, effective June 2, 2008.

See: 39 N.J.R. 5057(a), 40 N.J.R. 3321(a).

Rewrote (a)1 through (a)3.

Amended by R.2009 d.274, effective September 8, 2009.

See: 41 N.J.R. 2209(a), 41 N.J.R. 3308(a).

In (b), inserted “, in the future,”.

SUBCHAPTER 2. NO TELEMARKETING CALL LIST

13:45D-2.1 No telemarketing call list

The New Jersey no telemarketing call list is that list which contains the telephone numbers of New Jersey customers who are on the do-not-call registry created, maintained and made available by the Federal government or any telemarketing registry established by the State.

Recodified from 13:45D-2.2 by R.2009 d.274, effective September 8, 2009.

See: 41 N.J.R. 2209(a), 41 N.J.R. 3308(a).

Section was “Reserved”.

13:45D-2.2 (Reserved)

Recodified to N.J.A.C. 13:45D-2.1 by R.2009 d.274, effective September 8, 2009.

See: 41 N.J.R. 2209(a), 41 N.J.R. 3308(a).

Section was “No telemarketing call list”.

SUBCHAPTER 3. TELEMARKETER REGISTRATION

13:45D-3.1 Requirement for a telemarketer to register

A telemarketer shall not engage in telemarketing to a customer unless the telemarketer is registered with the Division pursuant to the requirements of this chapter.

13:45D-3.2 Application

(a) Each telemarketer shall annually register with the Division by submitting the following, on forms provided by the Director:

1. The name and street address of each location at which telemarketing is to be conducted from and any fictitious or trade name to be used by the telemarketer;
2. The type of business organization;
3. The name and residence and business street address of each officer, director, and principal;
4. The name, residence and business street address, and business telephone number of each person with an ownership interest of 10 percent or more in the telemarketing business and the percentage of ownership held;
5. The telephone number or numbers that the telemarketer will be using to make telemarketing sales calls and the name of its telephone service provider;
6. The telemarketer's simultaneous outgoing call capacity;
7. Whether the entity, each officer, director, principal or owner of a telemarketing business has been adjudged liable in an administrative or civil action involving theft, fraud or deceptive business practices. For the purposes of this paragraph, a judgment of liability in an administrative or civil action shall include, but not be limited to, any finding or admission that the entity, officer, director, principal or owner of a telemarketing business engaged in an unlawful practice or practices related to fraud, deceptive trade practices, relating to the license to do business or practice an occupation or trade regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of an organization's registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any State or Federal agency;
8. The name and address of an agent in the State of New Jersey for service of process; and
9. The name and address of any seller(s) with whom or on whose behalf the telemarketer has contracted to make any telemarketing calls.

Amended by R.2008 d.136, effective June 2, 2008.
See: 39 N.J.R. 5057(a), 40 N.J.R. 3321(a).

Added (a)6; and recodified former (a)6 through (a)8 as (a)7 through (a)9.

13:45D-3.3 Disclosure statement

(a) Each applicant shall file a disclosure statement with the Director stating whether the applicant has been convicted of any violations of the following provisions of the "New Jersey Code of Criminal Justice," Title 2C of the New Jersey Statutes, or the equivalent under the laws of any other jurisdiction:

1. Any crime of the first degree;
2. Any crime which is a second or third degree crime and is a violation of Chapter 20 or 21 of Title 2C of the New Jersey Statutes; or

3. Any other crime which is a violation of N.J.S.A. 2C:5-1 and 2C:5-2 (conspiracy), N.J.S.A. 2C:12-3 (terroristic threats), N.J.S.A. 2C:15-1 (robbery), N.J.S.A. 2C:18-2 (burglary), N.J.S.A. 2C:20-4 (theft by deception), N.J.S.A. 2C:20-5 (theft by extortion), N.J.S.A. 2C:20-7 (receiving stolen property), N.J.S.A. 2C:20-9 (theft by failure to make required disposition of property received), N.J.S.A. 2C:21-1 (forgery and other related offenses), N.J.S.A. 2C:21-2 (criminal simulation), N.J.S.A. 2C:21-2.1 (fraud relating to driver's license or other document issued by governmental agency to verify identity or age; simulation), N.J.S.A. 2C:21-2.3 (fraud relating to motor vehicle insurance identification card; production or sale), N.J.S.A. 2C:21-3 (frauds relating to public records and recordable instruments), N.J.S.A. 2C:21-4 (falsifying or tampering with records), N.J.S.A. 2C:21-5 (bad checks), N.J.S.A. 2C:21-6 (fraud relating to credit cards), N.J.S.A. 2C:21-7 (deceptive business practices), N.J.S.A. 2C:21-9 (misconduct by corporate official), N.J.S.A. 2C:21-10 (commercial bribery and breach of duty to act disinterestedly), N.J.S.A. 2C:21-11 (rigging publicly exhibited contest), N.J.S.A. 2C:21-12 (defrauding secured creditors), N.J.S.A. 2C:21-13 (fraud in insolvency), N.J.S.A. 2C:21-14 (receiving deposits in a failing financial institution), N.J.S.A. 2C:21-15 (misapplication of entrusted property and property of government of financial institution), N.J.S.A. 2C:21-16 (securing execution of documents by deception), N.J.S.A. 2C:21-17 (impersonation; theft of identity), N.J.S.A. 2C:21-19 (wrongful credit practices and related offenses), N.J.S.A. 2C:21-25 (money laundering and illegal investment), N.J.S.A. 2C:27-2 (bribery in official and political matters), N.J.S.A. 2C:27-3 (threats and other improper influence in official and political matters), N.J.S.A. 2C:27-4 (compensation for past official action), N.J.S.A. 2C:27-5 (retaliation for past official action), N.J.S.A. 2C:27-6 (gifts to public servants), N.J.S.A. 2C:27-9 (public servant transacting business with certain persons), N.J.S.A. 2C:28-1 (perjury), N.J.S.A. 2C:28-2 (false swearing), N.J.S.A. 2C:28-3 (unsworn falsification to authorities), N.J.S.A. 2C:28-4 (false reports to law enforcement officials), N.J.S.A. 2C:28-5 (tampering with witnesses and informants; retaliation against them), N.J.S.A. 2C:28-6 (tampering with or fabricating physical evidence), N.J.S.A. 2C:28-7 (tampering with public records or information), N.J.S.A. 2C:28-8 (impersonating a public servant or law enforcement officer), N.J.S.A. 2C:30-2 (official misconduct), or N.J.S.A. 2C:30-3 (speculating or wagering on official action or information).

(b) The disclosure statement required to be filed pursuant to this section may be used by the Director as grounds for denying, suspending or revoking registration. An applicant whose registration is denied or a telemarketer whose registration is suspended or revoked pursuant to this section shall be afforded an opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, upon written request to the Director within 30 days of the notice of denial, suspension or revocation. In any matter in

which the provisions of the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq., apply, the Director shall comply with the requirements of that Act.

13:45D-3.4 Duty to update information

Whenever any information required to be included in the disclosure statement changes, or if additional information should be added after the filing of the statement, the applicant shall provide that information to the Director, in writing, within 30 calendar days of the change or addition. Whenever any other information filed with the Director pursuant to the Act or this chapter has changed, the applicant shall provide that information to the Director, in writing, within 30 business days of the change or addition.

13:45D-3.5 Registration fee

A telemarketer shall submit with its annual registration application the fee specified in N.J.A.C. 13:45D-1.4(a).

13:45D-3.6 Requirement to cooperate

A telemarketer applicant seeking to register with the Division shall have the continuing duty to provide any assistance or information, and to produce any records requested by the Director, and to cooperate in any inquiry, investigation or hearing conducted by the Director.

13:45D-3.7 Refusal to issue, suspension or revocation of registration; hearing; other sanctions

(a) The Director may refuse to issue or renew, or suspend or revoke any registration issued by the Division for:

1. Failure to comply with, or for a violation of, N.J.S.A. 56:8-119 et seq. or any provision of this chapter; or
2. Any entity, officer, director, principal or owner of a telemarketing business having been adjudged liable in an administrative or civil action involving theft, fraud or deceptive business practices. For the purposes of this paragraph, a judgment of liability in an administrative or civil action shall include, but not be limited to, any finding or admission that the entity, officer, director, principal or owner engaged in an unlawful practice or practices related to fraud, deceptive trade practices, relating to the license to do business or practice an occupation or trade regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of an organization's registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any State or Federal agency.

(b) Prior to refusing to issue or renew or suspending or revoking a telemarketing registration or assessing a penalty, the Director shall notify the applicant or registrant and provide an opportunity to be heard.

(c) The Director may, in lieu of revoking a registration, suspend the registration for a reasonable period of time dependent upon the seriousness of the violation, or assess a penalty in lieu of suspension, or both.

(d) Notwithstanding the revocation of a registration, the Director may issue a new registration upon submission of a new application and compliance with this chapter.

13:45D-3.8 Registration number property of State

Each registration number issued by the Director to a telemarketer remains the property of the State of New Jersey. If the Director suspends, fails to renew, or revokes a registration, the telemarketer shall immediately return the registration number to the Director.

13:45D-3.9 Telemarketer specific no telemarketing call list

(a) Each telemarketer shall maintain a list of the names and telephone numbers of existing customers who have requested not to receive telemarketing sales calls from that telemarketer which notes the date the customer made the request.

(b) A telemarketer that receives a request from an existing customer not to receive telemarketing sales calls shall remove the customer from its calling list and take other necessary affirmative steps to cease telemarketing sales calls to the customer within 30 days of the customer's request.

(c) A telemarketer shall maintain a list of a specific seller's existing customers who have requested not to receive calls from the seller and provide this list to the seller at least once every quarter.

(d) Sellers shall maintain a list of names and telephone numbers of customers who have requested not to receive telemarketing sales calls. A seller that receives, either directly from the customer or indirectly from a telemarketer or other source, a request from an existing customer not to receive telemarketing sales calls from that seller, shall remove the customer from its calling list and take other necessary affirmative steps to cease telemarketing sales calls to the customer by or on behalf of the seller within 30 days of the customer's request.

(e) A seller who contracts with a telemarketer to make telemarketing sales calls on its behalf shall provide the telemarketer with the list of existing customers who have requested not to receive telemarketing sales calls from the seller.

13:45D-3.10 Recordkeeping requirements

(a) Each registered telemarketer shall maintain the following information:

1. The no telemarketing call list;