

Fellow Realtor, Don't SPAM Me!

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Whether you are dealing with a fellow Realtor in soliciting interest in a property or you are dealing with members of the public, customers or former clients, compliance with the Federal Marketing Restrictions on faxes, e-mails and phone solicitations are an absolute necessity.

Introducing yourself to a fellow Realtor and Participant of the MLS via an e-mail which you are highlighting a property may be technically permissible if you had the Realtor's e-mail information prior to the enactment of the CANN SPAM Act. Nevertheless, the failure to comply with the strict terms of the Act including a methodology for eliminating future similar communications (known as "opt out language") may subject the soliciting Realtor to severe penalties under various Federal Laws. The subject, therefore, which follows is related to how you maintain full compliance.

Do Not Fax Me! Unless?

The Junk Fax Prevention Act of 2005 the ("JFPA") became effective on July 9, 2005. Under the new law a fax can be sent to anyone with whom the sender has an "Established Business Relationship" ("EBR"). The new law provides that as long as the sender of a fax received the fax number from the recipient voluntarily or the sender received the fax number prior to the enactment of the Junk Fax Prevention Act.

The JFPA in its current form does not burden businesses and trade associations with having to obtain consents from each and every person or entity to whom a fax is to be sent or was sent in the past. If there exists an EBR then Realtors, Realtor Associations and other businesses can continue to send faxes to those entities. Compliance with the JFPA requires that members, Realtors, Brokers, trade associations, etc., must immediately document all fax numbers in their possession for clients, individuals, members, firms, MLS participants and other persons with whom they had a EBR as of July 9, 2005. Simply, there must be an official record made of all faxes in any person or entity's possession and a note should be made indicating when the fax number was received and if it was received prior to July 9. If a fax number was not received prior to July 9, 2005 then consent must be obtained from the prospective

The 1992 Telephone Consumer Protection Act Remains Valid

The Federal Communications Commission ("FCC") under authority it was given by the Telephone Consumer Protection Act of 1991 ("TCPA") adopted certain rules dealing with the transmission of faxes. The TCPA allows persons to send faxes

containing advertisements to individuals who have provided express consent to receive the fax. The TCPA expressly prohibits the transmission of “unsolicited advertisements” to a facsimile machine. The TCPA defines an “unsolicited advertisements” as “any material advertising the commercial availability or quality of any property, goods or services which is transmitted to any person without that person’s prior express invitation or permission.” There are severe penalties for violating the provisions of the TCPA. There is a \$500 per fax penalty with treble damages (i.e. triple) for willful violations.

The FCC formally enacted specific rules dealing with facsimile transmissions as authorized under the TCPA which are still in effect today. The rules require that all fax transmissions contain the date and time of the message. In addition, the fax must contain the identification of the business entity or individual sending the message and the telephone number of the machine sending the message or of the business entity or individual sending the message. The information must be contained in the margin at the top or the bottom of each page transmitted or on the first page of the first page.

The Requirements of the Junk Fax Prevention Act

There are three requirements of the JFPA to which fax senders must adhere. First, the sender must have an Established Business Relationship as explained above. Second, the sender must have obtained the fax number through the methods as described in the JFPA. Lastly, the sender is required to provide an “Opt-Out” mechanism as provided for in the JFPA.

The Established Business Relationship

An EBR exists when a business or other entity has had a transaction with someone or some entity or when a person makes an inquiry to a business. For trade associations, such as Boards of Realtors®, an EBR exist with its current members in so far as paying dues establishes that there has been a transaction between the entity and its members. In addition, associations have an EBR with any person or entity which has purchased its services, i.e. those persons who taken courses provided by the association, those persons or entities which have purchased subscription services, MLS services, etc.

As for real estate brokerage firms an EBR exists with consumers in the same manner as it would under the “Do Not Call” rules. One difference is that under the JFPA there are no time limitations as they exist under the “Do Not Call” rules. An EBR also exists between brokerage firms which have worked on cooperative transactions together. A brokerage firm may also fax other brokerages or Realtors who have made an inquiry to the specific brokerage firm.

What About a Telephone Call?

If I Can't Fax or Phone, Can I Email?

Finley Maxson's material should be right on the money and the fax opt out language should be included.

The final section should be related to

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