

[Name of Dealership]’s Telemarketing Policy

[NOTE: This Sample Telemarketing Policy template is for informational purposes only and is only intended as a starting point in your dealership’s efforts to comply with federal telemarketing restrictions. It is not intended as legal advice, and it is not a “turnkey” product that you can simply adopt as your own. The language it contains may not be appropriate for your operations. This template may be modified from time-to-time. Consult outside consultants as necessary for assistance in developing an appropriate Telemarketing Policy for your dealership.

This Sample Policy template primarily addresses the requirement that your dealership establish and implement: (i) a written policy to ensure compliance with the Company Specific Do-Not-Call requirements, and (ii) written procedures to comply with the National Do-Not-Call requirements as one of the prerequisites to avoiding liability for a violation of such requirements. This Sample Policy template also addresses other federal telemarketing requirements. It does not address telemarketing restrictions that your state or local jurisdiction may impose. Ensure that legal counsel that is familiar with federal, state and local telemarketing restrictions and your dealership operations reviews your Telemarketing Policy and your efforts to comply with all applicable telemarketing restrictions.

Introduction

This Policy sets forth the Dealership’s procedures for complying with the Company-Specific Do-Not-Call rules and the National Do-Not-Call rules contained in the FCC regulations implementing the Telephone Consumer Protection Act (“TCPA”) and the FTC Telemarketing Sales Rule [collectively referred to as the “federal Do-Not-Call rules”]. It also addresses other telemarketing restrictions. All Dealership employees and other persons or entities working on behalf of the dealership must abide by this Policy.

For purposes of this Policy, the term “telephone solicitation” means the “initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.” When involving phone calls to consumers over state lines, the term “telephone solicitation” also includes a call that is conducted to induce a charitable contribution. For purposes of this policy, the term “unsolicited advertisement” means “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.”

This Policy, in and of itself, does not create a contract between the Dealership and any person or entity.

Telemarketing Coordinator(s)

This Policy shall be implemented, maintained and updated as necessary by a Telemarketing Coordinator designated by the Dealership. The Telemarketing Coordinator shall report to the *[Insert Office or Title]*. In the event the Telemarketing Coordinator leaves the employment of the Dealership, the Dealership’s *[Insert Office or Title]* shall take over the responsibilities of the Telemarketing Coordinator until a new Telemarketing Coordinator is designated.

The Telemarketing Coordinator may delegate or outsource the performance of any assigned function as he or she deems necessary from time to time. The responsibilities of the Telemarketing Coordinator are as follows:

- Become thoroughly familiar with the federal Do-Not-Call rules and with other federal, state and local telemarketing restrictions that affect the Dealership;
- Coordinate Dealership compliance efforts relating to federal, state and local telemarketing restrictions;
- National Do-Not-Call Registry. Determine the area codes in which Dealership personnel, and others working on the Dealership's behalf, engage in telephone solicitations. Between September 1, 2003 and October 1, 2003, register the Dealership at <https://telemarketing.donotcall.gov> and download the telephone numbers from those area codes that are listed in the National Do-Not-Call Registry. Download updates to the National Registry in the same manner at least once every 90 days thereafter;
- Company-Specific Do-Not-Call List. Maintain a list of phone numbers of consumers who have stated that they do not wish to receive telephone solicitations from the Dealership or anyone acting on its behalf. Train employees and others working on behalf of the Dealership to immediately forward to the Telemarketing Coordinator any such requests. Promptly add such requests to the Company-Specific Do-Not-Call List (this must occur within 30 days of the Dealership's receipt of the request or sooner if possible). The List must contain the phone number(s) of the consumer making the request, the name of the consumer (if provided by the consumer) and the date of the request. Ensure that the consumer's phone number remains on the List for a period of at least 5 years. You also must ensure the consumer's request is forwarded and applied to affiliates of the Dealership if requested by the consumer or if the consumer reasonably would expect the affiliate to be included given the nature and type of goods or services offered and the identity of the affiliate. Train employees and others working on behalf of the Dealership of the information they must provide at the beginning of a telephone solicitation to consumers;

[State a procedure for screening telephone solicitations before they are initiated, such as:]

- *[Train employees and other's working on behalf of the Dealership that wish to initiate a telephone solicitation to first forward to the Telemarketing Coordinator the phone number he or she wishes to call. Upon receipt, search the list of phone numbers downloaded from the National Registry and the Company-Specific Do-Not-Call List to determine if the phone number he or she wishes to call is listed. Instruct the employee as follows:*
 - 1) *If the phone number is listed on the Company Specific Do-Not-Call List, inform the employee that the call may not be initiated;*
 - 2) *If the phone number is not listed on either the Company-Specific Do-Not-Call List or the List of phone numbers you downloaded from the National Registry, inform the employee that the call may be initiated (unless state or local law prohibits the call);*
 - 3) *If the phone number is not listed on the Company-Specific Do-Not-Call List but is among the phone numbers you downloaded from the National Registry, determine if any of the following exemptions apply:*
 - a) *Prior Express Permission*
 - b) *Established Business Relationship*
 - c) *Personal Relationship (intrastate telephone solicitations only);*
 - 4) *If one of the exemptions applies, inform the employee that the call may be initiated (unless state or local law prohibits the call);*
 - 5) *If none of the exemptions apply, inform the employee that the call may not be initiated;]*
- *[The Telemarketing Coordinator may permit an employee to directly access the Company-Specific Do-Not-Call List and the List of phone numbers downloaded from the National Registry for purposes of determining if a telephone solicitation may be initiated, provided that: (i) the employee has been thoroughly trained on the National and Company-Specific Do-Not-Call rules (including applicable exemptions), this Policy, and the procedures for accessing the Company-Specific Do-Not-Call List and the List of phone numbers downloaded from the National Registry, (ii) the Telemarketing*

Coordinator is confident the employee understands these rules, (iii) the employee agrees to and understands that he or she must furnish the Telemarketing Coordinator with documentation that substantiates the employee's subsequent reliance on an exemption to the National Do-Not-Call rules, and (iv) the employee agrees to abide by and understands the restrictions on the use of the Do-Not-Call Lists];

- Screen all incoming phone lists provided by manufacturers, lead providers or other entities to ensure that Dealership employees, or other persons working on the Dealership's behalf, are not provided a phone number to call for telemarketing purposes that the Dealership is prohibited from calling;
- Ensure that the Dealership fully complies with the Caller Identification requirements by and after January 29, 2004;
- Determine if any Dealership personnel, or others working on behalf of the Dealership, engage in the use of automatic telephone dialing systems ("autodialers") and/or prerecorded messages. If the Dealership uses such devices, develop and incorporate into this Policy appropriate procedures to ensure compliance with, and provide users of these devices with training on, the full set of restrictions that apply to their use;

[State a procedure for screening fax advertisements before they are initiated, such as:]

- *[Develop and incorporate into this Policy appropriate procedures to ensure that fax advertisements are only sent to persons who have provided the Dealership with prior express permission to receive fax advertisements;]*
- *[Review all outgoing Dealership faxes (or other transmissions) to the fax machine of any person or entity to determine if such faxes or transmissions are prohibited by the FCC rules implementing the TCPA;]*
- Ensure that Dealership fax advertisements contain the identifying information required by the FCC rules implementing the TCPA;
- Ensure that any do-not-fax requests that are received from consumers, businesses or other entities are properly recorded and that the requester's fax number is eliminated from lists of persons to whom the dealership is authorized to send fax advertisements;
- Produce and review fax activity reports from Dealership fax machines to ensure adherence to these procedures;
- Coordinate training on this Policy for all Dealership personnel, and others working on the Dealership's behalf, that are engaged in any aspect of telemarketing;
- To the extent that phone calls are initiated to, or received from, consumers located in another state, provide initial training to all employees and others working on behalf of the Dealership of the requirements they must satisfy to fully comply with the FTC Telemarketing Sales Rule. Develop and incorporate into this Policy appropriate compliance procedures for such calls;
- Ensure that each employee, and other person working on the Dealership's behalf, that is engaged in any aspect of telemarketing sign an acknowledgement that he or she has been informed of, and received compliance training on, this Policy;
- Ensure that any contract with an outside company to perform telemarketing services on behalf of the Dealership requires the contractor to comply with all federal, state and local telemarketing laws and regulations. Review the contractor's procedures for ensuring its compliance with this provision;
- Require independent contractors that perform telemarketing services at, and on behalf of, the Dealership to abide by this Policy. Include a contract termination remedy for violations of this Policy in the Dealership's contracts with such independent contractors;

- Develop and retain all necessary records to substantiate the Dealership's compliance with the National and Company-Specific Do-Not-Call rules and with other federal, state and local telemarketing restrictions. This includes, but is not limited to:
 - 1) The Dealership's Do-Not-Call Policy;
 - 2) The Dealership's Company-Specific Do-Not-Call List;
 - 3) The List of phone numbers the Dealership has downloaded from the National Registry, the dates of the downloads and any registration or other information necessary to demonstrate compliance with the National Do-Not-Call rules. This includes records demonstrating that the Dealership has updated its Do-Not-Call List of numbers from the National Registry at least once every three months;
 - 4) Documentation supporting the Telemarketing Coordinator's determination that an exemption to the National Do-Not-Call rules applies which permits a telephone solicitation to a phone number that is contained on the List downloaded from the National Registry;
 - 5) Documentation supporting the Telemarketing Coordinator's determination that an exemption exists which permits the transmission of a fax advertisement, a telephone call using an autodialer, or a prerecorded voice message;
 - 6) Records the Dealership must maintain to comply with the 24-month record retention requirement imposed by the FTC Telemarketing Sales Rule;
 - 7) Documentation of all telemarketing training of employees or others working on behalf of the dealership that are engaged in any aspect of telemarketing;
 - 8) Copies of contracts with outside companies and independent contractors that perform telemarketing services on behalf of the Dealership that contain the contractual language specified above;
 - 9) Documentation of all Dealership efforts to monitor and enforce this Policy (records pertaining to disciplinary action against employees may be retained by the Human Resources Manager); and
 - 10) Employee Acknowledgements of their telemarketing responsibilities;
- Coordinate with the Dealership's Program Coordinator for Safeguarding Customer Information to ensure that this Policy and the Dealership's efforts to comply with federal, state and local telemarketing restrictions are consistent with the Dealership's efforts to appropriately safeguard its Customer Information;
- Supplement these procedures as necessary to ensure the Dealership complies with additional requirements imposed by state or local law;
- *[Add any additional Telemarketing Coordinator responsibilities that apply at your Dealership]*

Employee Requirements

Each employee and other person acting on behalf of the Dealership that is engaged in any aspect of telemarketing shall abide by the following requirements:

1. Upon receiving a request (whether written or verbal) from a consumer not to receive calls from the Dealership, or any person or entity acting on its behalf, you will promptly report to the Telemarketing Coordinator the consumer's name (if provided), telephone number and the date of the request;
2. Upon receiving a request (whether written or verbal) from any person or entity not to receive fax advertisements from the Dealership, or any person or entity acting on its behalf, you will promptly report to the Telemarketing Coordinator the requester's name (if provided), fax number and the date of the request;

3. You may not share with any party (other than with an affiliated entity or other party making a telephone solicitation on your behalf or as necessary to comply with this requirement) the consumer's request not to be called;
4. Before initiating any telephone solicitation, you will inform the Telemarketing Coordinator of all area codes of consumers that you wish to contact. Should you subsequently identify additional area codes of consumers that you wish to contact after initially providing this information, you will inform the Telemarketing Coordinator of the additional area codes. You are prohibited from initiating a telephone solicitation to any area code that the Dealership has not registered on the National Do-Not-Call Registry;

[State a procedure for screening telephone solicitations before they are initiated, such as:]

5. *[Before initiating any telephone solicitation, you will provide the Telemarketing Coordinator with the phone number of the person you wish to call. If the Telemarketing Coordinator determines that the person is listed on the National Do-Not-Call Registry and no exemption to the Registry applies, or that the person is listed on the Dealership's Company-Specific Do-Not-Call List, you are prohibited from calling that person;]*

Or

[Before initiating any telephone solicitation, you will execute the following procedures:

- 1) *Check the Dealership's Company Specific Do-Not-Call List. If the phone number is listed, you may not initiate the call. If it is not listed, proceed to the next step;*
 - 2) *Check the List of phone numbers the Dealership has downloaded from the National Do-Not-Call Registry. If the phone number is listed, proceed to the next step. If it is not listed, you may call (unless state or local law prohibits the call);*
 - 3) *Determine if any of the following exemptions to the National Do-Not-Call rules apply:*
 - a) *Prior Express Permission*
 - b) *Established Business Relationship*
 - c) *Personal Relationship (intrastate telephone solicitations only);*
 - 4) *If one of the exemptions applies, you may call (unless state or local law prohibits the call), provided that you furnish the Telemarketing Coordinator documentation that supports the existence of the applicable exemption. The Telemarketing Coordinator will explain to you the types of acceptable documentation and the frequency with which you must provide it;]*
6. Before initiating any telephone solicitation, you will review this policy and sign an Employee Acknowledgement of your understanding of this Policy and your agreement to abide by its terms;
 7. You may not initiate a telephone solicitation to a consumer before 8 a.m. or after 9 p.m.;
 8. At the beginning of any telephone solicitation, you will provide the called party with the following identifying information:
 - a) Your name;
 - b) The name of the Dealership;
 - c) Your telephone number. This must be a phone number where the Dealership can be contacted during normal business hours. It may not be a 900 number or other number that will cause the called party to incur charges that exceed his or her local or long distance transmission charges;
 9. When initiating a telephone solicitation to a consumer located in another state, you also will state that the purpose of your call is to sell a good or service and you will describe the nature of the good or service that is the subject of your phone call. In addition, prior to discussing the sale of a

good or service or a prize promotion over the telephone with a consumer located in another state, you will consult with the Telemarketing Coordinator regarding additional responsibilities that you must comply with under the FTC Telemarketing Sales Rule;

10. You are prohibited from engaging in false, misleading, deceptive or abusive acts or practices in telephone solicitations or other conversations with any person or entity;

State a procedure for screening fax advertisements before they are initiated, such as:

11. *[Prior to transmitting any advertisement or solicitation to the fax machine of any person or entity, you will consult with the Telemarketing Coordinator to ensure the Dealership is authorized to send the transmission];*
12. Prior to using any automatic telephone dialing system (“autodialer”) or delivering a prerecorded message, you will consult with the Telemarketing Coordinator to ensure the Dealership is authorized to use such device;
13. You will immediately forward to the Telemarketing Coordinator any list of consumer phone numbers that you receive from any person or entity so that it may be screened against the Dealership’s Company-Specific Do-Not-Call List or the List of phone numbers downloaded from the National Do-Not-Call List;
14. You will immediately forward to the Telemarketing Coordinator any list of fax numbers that you receive from any person or entity so that the Telemarketing Coordinator can determine if the Dealership has prior express permission to send fax advertisements to the those persons or entities;
15. You may not sell, rent, lease, purchase, disclose or use the National Do-Not-Call Registry, the Dealership’s Company-Specific Do-Not-Call List, or any part thereof, for any purpose except to comply with this Policy and any federal, state or local requirement for not calling phone numbers listed on a do-not-call list;
16. You may not engage or participate in any cost-sharing arrangement with other telemarketers for the purpose of evading or reducing the annual fee for accessing the national database;
17. You must comply with this Policy and all applicable federal, state and local laws and regulations governing any aspect of telemarketing. You understand that the Dealership will monitor and enforce this Policy. **Any violation may result in disciplinary action, up to and including termination for employees, or contract termination for independent contractors that perform services in the Dealership.** The contract termination remedy must be expressly provided for in any Dealership agreement with such independent contractors;
18. *[Add additional requirements that apply at your Dealership for employees and independent contractors engaged in telemarketing].*

Do-Not-Call Lists

Company-Specific Do-Not-Call List

[Explain how the Dealership’s Company-Specific Do-Not-Call List will be maintained, updated and accessed]

National Do-Not-Call Registry

[Explain how the Dealership’s List of phone numbers for which it registered on the National Registry will be accessed, maintained and updated]

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