GUIDELINES FOR TELEMARKETING COMPANIES

The Utah Division of Consumer Protection is committed to the protection of consumers and enforcement of all applicable laws. It is also committed to assisting and educating businesses in understanding and complying with all Utah regulations. The Division welcomes contact from any business that has questions or needs assistance in formulating proper procedures or interpreting the regulations the Division enforces.

The following statutes regulate telemarketing operations that are conducted from within the state of Utah and/or that solicit Utah consumer(s).

- Utah Code § 13-26-1, The Utah Telephone Fraud Prevention Act (TFPA). This statute defines the term "telemarketing activities," lists prohibited practices, and establishes penalties that may be imposed for a violation of the regulations.
- Utah Code § 13-11-1,The Utah Consumer Sales Practices Act (CSPA). This statute imposes regulations regarding disclosures and places restrictions on other representations that might be made during telemarketing sales.

This handbook of guidelines will help telemarketing companies to establish business practices and procedures that comply with these laws. Following these guidelines and complying with all relevant statutes will also help to protect your telemarketing company from frivolous complaints filed by consumers.

RIGHT OF RESCISSION-CANCELLATION

Under the TFPA, a purchaser has an automatic right of cancellation (see Utah Code §13-26-5).

Follow these guidelines to ensure compliance:

1. In each telemarketing solicitation:
   - tell the consumer that the sale may be canceled before midnight of the third business day after the consumer receives the merchandise;
   - tell the consumer that a cancellation must be in writing, and must be postmarked or electronically date stamped within the cancellation period;
   - provide the consumer with the full mailing address where a notice of cancellation must be sent; and
   - if you are willing to accept a notice of cancellation by e-mail or fax, provide the appropriate contact information.
2. Institute a system to record each telemarketing solicitation to verify that the consumer received a verbal notice of the right to cancel.
3. Include in any contract and written material(s) provided to the consumer the same information listed in item (1) above regarding the deadline and method for cancellation.
4. Institute a system to document the date on which the consumer receives the merchandise. The date of receipt triggers the cancellation period, regardless of whether the consumer purchases the merchandise or receives it for review.
5. Correctly calculate the cancellation period. The cancellation period starts on the first business day AFTER the date the merchandise is received by the consumer, regardless of whether the merchandise is received physically (through the mail or through a courier service) or virtually (through e-mail or other form of electronic delivery or access).
6. If a consumer calls the company in an attempt to cancel the transaction, remind the consumer that the cancellation must be in writing and postmarked or electronically date stamped within the three-day cancellation period.
7. If a consumer exercises the right to cancel, give a FULL REFUND. Do not charge or retain a restocking fee or any type of cancellation penalty.

Consequences for failure to comply:

- ➢ If you fail to verbally advise a consumer of the right to cancel, the cancellation period is extended to 90 days from the date the consumer receives the merchandise.
- ➢ If you do not document having verbally advised a consumer of the requirement to cancel in writing, the Division will accept the consumer’s claim of having verbally cancelled the transaction as a valid cancellation.

REFUND POLICY

Under the CSPA, a telemarketing company is required to honor cancellations and give refunds after the three-day statutory cancellation period unless the company has clearly notified consumers otherwise.

Follow these guidelines to terminate the consumer's right to a refund:

1. In each telemarketing solicitation, clearly explain whatever refund policy will go into effect after the three-day cancellation period.
2. Institute a system to record each telemarketing solicitation to verify that the consumer received a verbal notice of the refund policy.
3. Include a conspicuous statement of the refund policy in any contract, written material(s), and correspondence sent to the consumer.
4. If your company's refund policy establishes a specific date after which no refunds will be given, include wording such as the following:
   - "All sales are final after the three-day cancellation period has passed."
   - "After [date], all sales are final."
   - "No refunds will be given after [date]."

Consequences for failure to comply:

- If you fail to clearly advise a consumer of the point at which no refunds will be given, the Division will consider the transaction subject to refund indefinitely.

SCREENING OF PROSPECTIVE CUSTOMERS

The CSPA makes it illegal to solicit, or to enter into, a consumer transaction with a person who lacks the mental ability to comprehend the nature and consequences of the transaction, or who lacks the ability to benefit from the transaction. This provision is particularly relevant to transactions that involve services—such as mentoring or coaching programs or products that involve internet and website development. In such circumstances, you must determine that each consumer contacted has the technical expertise and ability to understand and make use of the product before closing a sale.

Be especially careful in soliciting senior citizens, individuals with disabilities, and individuals with a mental impairment. It is generally difficult for a telemarketing company to demonstrate that such individuals have the ability to understand and make use of coaching or mentoring programs that require technical knowledge and a long-term commitment.

Take note that the Division is committed to protecting senior citizens, who are often vulnerable to coercive, high-pressure sales techniques. Be diligent in screening all prospective customers to ascertain their mental abilities, the degree to which they understand the product or program being offered, and their ability to benefit from the transaction.

EXTRA COSTS

The TFPA makes it illegal for a telemarketer to make an untrue statement or to withhold a fact if the statement or fact is material to the transaction. This issue arises most frequently in transactions where there are ongoing fees, costs for upgraded or continued services, or any other circumstances where a consumer will be required to pay anything beyond the initial purchase price. Such fees and costs are "material" to the transaction and must be fully disclosed at the time of the sale.

EARNINGS CLAIMS and GUARANTEES

Do not represent to a consumer that the purchase will result in a financial return, either through potential earnings or through future income. If you make such a statement, you could be considered to be dealing in securities. The securities industry is heavily regulated at both the state and federal levels. Special licensing is required to make such claims and to sell such investments. A telemarketing license or permit is not sufficient, even if the claims can be demonstrated as true. If you have data to demonstrate that actual purchasers have recouped the investment through savings—for example, from purchasing energy-efficient appliances—it is legal to provide that data.