

SafeAlert



A loss control advisory from the ABA-sponsored insurance program underwritten by Progressive

Litigation Threats Over "Do Not Call" Policy

This article is digested from a Banker Alert recently distributed by the ABA to member banks. Progressive has already received a claim from a community bank targeted by this individual.

Background

A self-styled "consumer rights advocate" located in Apple Valley, Minnesota is using the threat of litigation regarding alleged violations of the FCC's "Do Not Call" regulations and the Telephone Consumer Protection Act ("TCPA") to prompt a financial "settlement" with his target. The amounts demanded range between \$1,500 and \$5,000.

If your institution engages in telemarketing, provide a copy of your institution's "Do Not Call" policy without delay, if requested.

He contacts a targeted institution via e-mail, requesting that his phone number be placed on the institution's internal "Do Not Call" database. The e-mail also requests that he be sent written verification that the number has been placed on the "Do Not Call" list, along with a copy of the institution's "Do Not Call" policy. He demands that these documents be sent to him within five days via U.S. Mail.

If the target institution does not comply with these demands within the five day period, he sends a letter – designated as a "Rule 408 Settlement Communication" – threatening to file suit in Minnesota if a settlement is not forthcoming. His letter usually attaches a copy of the proposed complaint, along with other materials. The thrust of the letter and the complaint is that the institution has violated FCC regulations by failing to provide a copy of its "Do Not Call" policy and the requested verification "on demand." He takes the position that the FCC regulations obligate an institution to respond within five days.

Discussion

News reports indicate that the perpetrator has previously targeted other industries with similar ploys related to the "Do Not Call" regulations. Based upon the number of complaints that have been received by the ABA, it appears that he is now shifting his attention to banks and other financial institutions.

The success of his strategy is based upon the assumption that his targets are more likely to settle than spend the money to litigate a relatively small claim, especially if the target is located outside of Minnesota. Generally, if an institution engages in telemarketing or phone selling, they are required to maintain an internal "Do Not Call" policy and produce it "on demand." While the FCC has not formally opined on what constitutes "on demand," Commission orders suggest that the position that the policy must be produced within five days is probably unreasonable. However, a punctual response is required, and the institution's policy should be produced with as little delay as possible. If an institution does not engage in telemarketing, it is not required to maintain a "Do Not Call" policy.

Suggested Action

The best defense in responding to those who may attempt to imitate his approach is to be prepared to respond to these requests. If your institution engages in telemarketing or other phone sales, you should provide a copy of your institution's "Do Not Call" policy without delay. Having a "Do Not Call" policy in place is important, and promptly providing it to anyone who requests it is your best protection. If your institution has a website, it may be a good idea to make it available there. If your institution does not telemarket, you are not obligated to maintain an internal "Do Not Call" policy. In this circumstance, a prompt response stating that your institution does not telemarket is appropriate. Based upon information received from our members, however, this course of action may or may not prevent a suit from being filed.

For more information, contact Judi Kovach, Loss Control Manager at 800-274-5222.