

# TITLE 11 CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL

## ARTICLE 1. TELEPHONE SOLICITATIONS

### Rule 1. Definitions

#### 11 IAC 1-1-1 Applicability

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-2

Sec. 1. The definitions set forth at IC 24-4.7-2, as supplemented in this rule, apply throughout this title. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1854*)

#### 11 IAC 1-1-2 “Contract made under a telephone sales call” defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-4-4; IC 24-4.7-4-5

Sec. 2. For the purposes of IC 24-4.7-4-4 and IC 24-4.7-4-5, a “contract made under a telephone sales call” does not include a contract for the sale, purchase, or mortgage of real estate if:

(1) the sale, purchase, or mortgage of real estate is not completed; and

(2) the payment or authorization of payment is not required;

solely as a result of the telephone sales call. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-2; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1854*)

#### 11 IAC 1-1-3 “Division” defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-2-4

Sec. 3. As used in this title, “division” refers to the consumer protection division of the office of the attorney general. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-3; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1854*)

#### 11 IAC 1-1-3.5 “Existing debt or contract” defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-1-1

Sec. 3.5. (a) For the purposes of IC 24-4.7-1-1, “existing debt or contract” means:

(1) a sum of money currently owed by the consumer who receives the telephone call to the telephone solicitor making the call or to the person who contracted, hired, or authorized the telephone solicitor making the call; or

(2) a legally binding agreement currently in effect between the consumer who receives the call and the telephone solicitor making the call or the person who contracted, hired, or authorized the telephone solicitor making the call.

(b) For the purposes of IC 24-4.7-1-1, an “existing debt or contract” does not include:

(1) an existing debt that the consumer has with a person other than the telephone solicitor making the call or the person who contracted, hired, or authorized the telephone solicitor making the call; or

(2) an existing contract that the consumer has with a person other than the telephone solicitor making the call or the person who contracted, hired, or authorized the telephone solicitor making the call.

(*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-3.5; filed Feb 17, 2003, 9:54 a.m.: 26 IR 2300*)

#### 11 IAC 1-1-4 “Express request” defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-1-1

Sec. 4. For the purposes of IC 24-4.7-1-1, “express request” means a specific grant of authority made by a residential

telephone subscriber at a verifiable date and time authorizing a telephone solicitor to make a telephone sales call to the residential telephone subscriber's residential telephone number. The grant of authority:

- (1) shall not be included as a condition of a contract for the sale of consumer goods or services;
- (2) shall not be given by a person other than the residential telephone subscriber to whom the call will be made; and
- (3) if in writing, must be set forth in a document that:
  - (A) is separate from any written contract between the residential telephone subscriber and the telephone solicitor authorized to make the telephone sales call;
  - (B) is printed in 12-point boldface type or larger; and
  - (C) contains only the grant of authority.

*(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-4; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1854)*

**11 IAC 1-1-5 "Person" defined**

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 4-6-9-8; IC 24-4.7-3-7

Sec. 5. As used in this title, "person" means an individual, an incorporated or unincorporated organization, an association, or any other legal entity. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-5; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)*

**11 IAC 1-1-6 "Residential telephone number" defined**

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7

Sec. 6. As used in this title and for the purposes of IC 24-4.7, "residential telephone number" means a number held or used by a residential telephone subscriber that terminates at that subscriber's place of residence. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-6; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)*

**11 IAC 1-1-7 "Residential telephone subscriber" defined**

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7

Sec. 7. As used in this title and for the purposes of IC 24-4.7, "residential telephone subscriber" means an individual:

- (1) who has subscribed to telephone service terminating at that individual's residence, or the individual's spouse; or
- (2) for whose use another person subscribes to telephone service terminating at the individual's place of residence.

*(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-7; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)*

**11 IAC 1-1-8 "Telephone privacy list" defined**

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-3

Sec. 8. As used in this title, "telephone privacy list" refers to the no telephone sales solicitation listing published by the division under IC 24-4.7-3. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-8; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)*

**Rule 2. Telephone Solicitors' Maintenance of Records Related to Telephone Sales Solicitations**

**11 IAC 1-2-1 Telephone solicitors' required records**

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7

Sec. 1. A telephone solicitor subject to IC 24-4.7 shall keep the following information as part of its business records:

- (1) the name and telephone number of each consumer contacted by a telephone sales call;
- (2) all substantially different advertising, brochures, telemarketing scripts, and promotional materials used in its solicitation of the consumer;
- (3) all express requests authorizing the telephone solicitor to contact the consumer; and
- (4) for all current and former employees directly involved in telephone sales, the employee's:
  - (A) name;
  - (B) last known home address;
  - (C) last known telephone number; and
  - (D) job title(s).

*(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)*

**11 IAC 1-2-2 Length of time telephone solicitors must retain records**

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7

Sec. 2. A telephone solicitor shall keep the information in section 1 of this rule for two (2) years following the date the information first becomes part of its records. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-2; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)*

**11 IAC 1-2-3 Attorney general's access to solicitor's records**

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7

Sec. 3. Within ten (10) days of an oral or written request by the division, a telephone solicitor shall make the records it keeps pursuant to this rule available for inspection and copying by the attorney general during normal business hours. This section does not limit the attorney general's ability to inspect and copy material pursuant to any other means authorized by law. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-3; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)*

**Rule 3. Enforcement of Violations of IC 24-4.7**

**11 IAC 1-3-1 Mitigating factors**

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-3-2; IC 24-4.7-4; IC 24-4.7-5

Sec. 1. In any proceeding brought against a telephone solicitor by the attorney general under IC 24-4.7-5, the attorney general may consider the following as mitigating factors in the attorney general's decision to seek civil penalties under IC 24-4.7-5:

- (1) That the defendant has obtained, from the division or the agent with which the division has contracted under IC 24-4.7-3-2, the most recently published telephone privacy list.
- (2) That the defendant has maintained the records required by 11 IAC 1-2-1.
- (3) That the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of IC 24-4.7-4.
- (4) That the defendant has not previously been found to have violated IC 24-4.7.

*(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-3-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)*

**Rule 4. Charitable Solicitor's Disclosure**

**11 IAC 1-4-1 Charitable solicitor's disclosure**

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 23-7-8-1; IC 24-4.7-4-2

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Sec. 1. The attorney general shall consider a person engaged in noncommercial speech, including a professional fundraiser consultant or solicitor as defined at IC 23-7-8-1 who calls on behalf of such charitable organization, to have sufficiently complied with IC 24-4.7-4-2 if the person makes the disclosures required by IC 24-4.7-4-2 before requesting a donation. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-4-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1856*)

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