

# ASK NVAR

## Limitations On Fax and E-mail Advertising

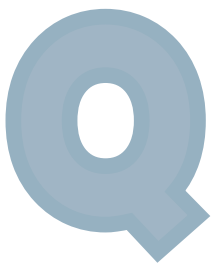


### COMPLYING WITH CONSUMER RIGHTS LAWS

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E-mails and fax advertisements have become common tools for REALTORS®. However, federal law places limits on the use of these tools. Presented below are some questions and answers to help you comply with the federal laws.



**QUESTION: How can I launch a successful e-mail advertisement campaign and comply with the CAN-SPAM Act?**

**Answer:**

The CAN-SPAM (Controlling the Assault of Non-Solicited Pornography and Marketing) Act, sets requirements for any e-mail that advertises or promotes a commercial product or service, including Web site content. Here are four key requirements for commercial e-mails:

(1) Accurate header information. Your e-mail's "To" and "From" fields, as well as the originating domain name and e-mail address, must be accurate and identify the person who initiated the e-mail.

(2) No deceptive subject lines. The subject line can't mislead the recipient about the content or subject matter of the message. Your message must contain clear notice that the content is an advertisement or solicitation and that the

recipient can opt-out of receiving more commercial e-mail from you.

(3) Easy opt-out method. You must provide a return e-mail address or another Internet-based response mechanism that allows recipients to ask you not to send future e-mail messages. When you receive an opt-out request, the law gives you 10 business days to stop sending e-mail to the requester's e-mail address.

(4) A valid physical mailing address.



**QUESTION: Can I send advertisements for my services by fax to clients, customers or prospective clients?**

**Answer:**

It is unlawful for you to send unsolicited advertisements to any fax machine, including those at both businesses and residences, without the recipient's prior express invitation or permission. An "unsolicited advertisement" is "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, in writing or otherwise." However, you may

always send fax advertisements to recipients with whom you have an “established business relationship” (EBR), as long as the fax number was provided voluntarily by the recipient.

An EBR is “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber, [...] on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.”

Specifically, you can send such a fax to an EBR customer if you also:

1. obtain the fax number directly from the recipient, through, for example, an application, contact information form, or membership renewal form; or
2. obtain the fax number from the recipient’s own directory, advertisement, or site on the Internet, unless the recipient has noted on such materials that it does not accept unsolicited advertisements at the fax number in question; or
3. take reasonable steps to verify that the recipient consented to have the number listed, if obtained from a directory or other source of information compiled by a third party.

If you had an EBR with the recipient and possessed the recipient’s fax number before July 9, 2005, you may send the fax advertisements without demonstrating how the number was obtained.

If pursuant to these rules, you can send a fax advertisement, you must provide notice and contact information on the fax that allows recipients to “opt-out” of future faxes. The notice must:

- (1) be clear, conspicuous and located on the first page of the advertisement;
- (2) state that the recipient may make a request that you not send any future faxes and that failure to comply with the request within 30 days is unlawful; and
- (3) include a telephone number, fax number, and cost-free mechanism (including a toll-free telephone number, local number for local recipients, toll-free fax number, Web site address, or e-mail address) to opt-out of faxes that must be available 24 hours a day, seven days a week.

If you receive a request not to send more faxes, you must honor that request within the shortest reasonable time from the date of the request, not to exceed 30 days. You are also prohibited from sending future fax advertisements to the recipient unless the recipient subsequently provides prior express permission to the sender.