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INSTRUCTIONS FOR COMPLETING TELEPHONE SOLICITOR REGISTRATION

I. INTRODUCTION

Idaho law requires **“telephone solicitors”** to register with the Idaho Attorney General’s Office before engaging in “telephone solicitations” in the State of Idaho. The Attorney General enforces the following laws and rules that are applicable to telephone soliciting in Idaho:

- Idaho Telephone Solicitation Act, title 48, chapter 10, Idaho Code
- Idaho Rules of Telephone Solicitations and Pay-Per-Telephone Call Services, IDAPA 04.02.0200 et seq.
- Idaho Consumer Protection Act, title 48, chapter 6, Idaho Code
- Idaho Rules of Consumer Protection, IDAPA 04.02.0100 et seq.
- Telemarketing Sales Rule, 16 CFR § 310.1 et seq.

Before you begin the registration process, please familiarize yourself with the above laws and rules, which are accessible through the Attorney General’s website at www.ag.idaho.gov.

For **general questions about the registration form** or the status of your registration, contact the Attorney General’s Telemarketing Specialist at (208) 334-2424, or by email at telemarketing.enforcement@ag.idaho.gov.

II. DO YOU NEED TO REGISTER?

Because the Attorney General's Office represents the State of Idaho, not individual businesses, the office cannot advise whether you must register or if you are exempt from registration. While we endeavor to answer general questions about the registration process, ***our telemarketing specialist is not an attorney*** and cannot give legal advice to callers. Consequently, if you have questions about your legal obligations under the ITSA, you must speak with a private attorney.

The Idaho State Bar's Lawyer Referral Program can assist you in locating an Idaho-licensed attorney. You may access the Referral Program by calling (208) 334-4500 or by visiting www.isb.idaho.gov.

A. What Is a Telephone Solicitor?

Only persons or entities that fall with the definition of a "telephone solicitor" must register. A "***telephone solicitor***" is defined as "any person who, on his own behalf or through other persons or through use of an automatic dialing-announcing device, engages in a telephone solicitation."

A "***telephone solicitation***" is defined as "any unsolicited call or unsolicited facsimile to a purchaser for the purpose of asking, inducing, inviting, requesting, or encouraging the purchaser to purchase or invest in goods or services during the course of a telephone call." Idaho law also includes in its definition of a "telephone solicitation" ***communications*** that offer a free gift or where it is represented that goods or services are available at a reduced price and a return call is invited or followed up by call to the purchaser wherein the intent is to purchase/sell goods or services.

Breaking down these two definitions into their individual requirements, you are a ***telephone solicitor*** if:

- ▶ You are a ***person*** (this includes companies, corporations, partnerships, and fictitious businesses); and
- ▶ You engage in ***telephone solicitations*** by:
 - making (or hiring someone else to make on your behalf) ***unsolicited calls*** or ***unsolicited facsimile transmissions*** to a purchaser for the purpose of advertising or selling goods or services or encouraging the purchaser to invest in something; or

Using an ***automatic dialing-announcing device*** to make unsolicited calls constitutes a telephone solicitation. An auto dialer is a device that selects and dials phone numbers and disseminates a prerecorded or synthesized voice message to the purchaser.

- **communicating** (or hiring some else to communicate on your behalf) with purchasers in writing or orally and
 - offering a free gift or represent that goods or services are available at a reduced price; and
 - inviting the purchaser to call you or you follow up with a call to the purchaser with the intent to sell goods or services.

B. Do Third-Party Telemarketers Need to Register?

No. In the past, the Attorney General's Office has registered third-party telemarketers as a courtesy. However, we no longer accept applications from third-party telemarketers.

Unless exempt, ***the entity that hired the third-party telemarketer is a "telephone solicitor"*** under Idaho Code § 48-1002(12) and ***must register*** with our office before it authorizes a third-party telemarketer to telephone solicit on its behalf.

If you have questions about your legal status under Idaho Code § 48-1002(12), please speak with a private attorney. The Attorney General's Office ***will reject*** applications received from third-party telemarketers. Please keep in mind, however, that registration fees are nonrefundable.

C. Are Certain Telephone Solicitors Exempt from Registration?

Yes. Idaho Code § 48-1005 exempts some telephone solicitors from Idaho's registration requirement. Before assuming you are exempt under one of the following categories, you need to consult with an attorney who is knowledgeable about the Idaho Telephone Solicitation Act and the Idaho Rules of Telephone Solicitations:

- ⊕ You engage in a telephone solicitation that is an isolated transaction;
- ⊕ Less than 60% of your prior year's sales were made via telephone solicitations;
- ⊕ You only call purchasers who previously bought goods or services from you;
- ⊕ You only call consumers to set appointments, not to sell anything over the phone;

- ⊕ Your business is licensed by an Idaho or federal government agency that has authority to revoke your license (this exemption excludes Idaho's Secretary of State Office);
- ⊕ You only call purchasers to sell only newspaper subscriptions or advertisements in printed (not an Internet) telephone books that are circulated to a general (not a special) population;
- ⊕ You only call purchasers to sell certain media items in compliance with the Federal Trade Commission's "Use of Negative Option Plans by Seller in Commerce Rule" as promulgated (or updated) in 16 CFR 425 (please consult IDAPA 04.02.02020.06 for more details);
- ⊕ You have at least one business location in Idaho where 90% of your business involves purchasers obtaining services and products at that location;
- ⊕ You issue securities or are a subsidiary of an issuer of securities subject to the Securities and Exchange Act; or
- ⊕ You publish a 24+ page printed (not an Internet) catalog of your goods and services and you deliver the catalog to 250,000+ purchasers in more than one state.

III. WHAT ARE THE REGISTRATION REQUIREMENTS?

A. When Do I Need to Register?

You must be registered with the Attorney General's Office **at least 10 days before** you begin telephone soliciting in Idaho. The date of registration is printed on your registration certificate, which the Attorney General's Office mails to you upon approval of your registration. The Attorney General's Office has 20 days from the date it receives your registration to: (a) register you; (b) request additional information; or (c) deny your registration.

Generally the registration process takes less than 30 days (including mailing and processing time). However, if an application is incomplete, the process may take much longer. ***It therefore is important to apply early and provide all of the required documentation with your registration form the first time.***

B. What Documents Must I Submit?

The registration requirements are different depending on the type of goods or services you sell and whether you offer purchasers free gifts or prizes. All applicants, however, ***MUST submit***—at a minimum—the following:

Completed, Signed, and Notarized Telephone Solicitor Registration

Exhibit Nos.:

6 Irrevocable Consent to Service of Process

What Is This?



Designates the Idaho Attorney General as the telephone solicitor's agent to receive civil process (a copy of the summons and complaint) in any lawsuit brought under the ITSA or the ITSr. See IDAPA 04.02.02080 & 04.02.02081.

7 Financial Institution Accounts

What Is This?



Identifies information for each of the telephone solicitor's financial accounts, including demand accounts, checking accounts, merchant accounts, and credit card accounts. See IDAPA 04.02.02040.09.

Cashier's Check made payable to the "Idaho Attorney General's Office"

How Much Do I Pay?



If you have ***never registered*** to telephone solicit in Idaho or it has been ***more than one year*** since you last registered, you must pay the \$50 registration fee.

If you ***previously registered*** with the Attorney General's Office within the past one year, you only need to pay a \$25 renewal fee.

C. Are Other Documents and Exhibits Required?

You *may* have to submit **additional documentation** if:

- ▶ the telephone solicitor, its parent, or its affiliates is officially/legally **organized**;

Exhibit No. 1 Business Organization Filings



What Is This?

Depending on the type of business organization, include articles of incorporation, bylaws, amendments, partnership agreements, fictitious business registrations, or other documents. See IDAPA 04.02.02040.02.

- ▶ you provide your employees with **training materials or scripts** to assist them to complying with Idaho law and communicating professionally and effectively with Idaho purchasers (HIGHLY RECOMMENDED);

Exhibit No. 2 Telephone Solicitation Scripts



What Is This?

A copy of all sales scripts, including sample openings and closings, the telephone solicitor requires salespersons to use when soliciting prospective purchasers. See IDAPA 04.02.02040.10 & 04.02.02040.11.

Exhibit No. 3 Training Materials Provided to Representatives



What Is This?

A copy of all outlines, instructions, and information regarding how to conduct sales, sample introductions, sample closings, product information, and contest or premium-award information provided by the telephone solicitor to salespersons or of which the telephone solicitor informs salespersons. See IDAPA 04.02.02040.11.

- ▶ you do not offer the purchaser an **unqualified right to cancel** the transaction;

- Exhibit No. 2 Telephone Solicitation Scripts**
(see above)

- Exhibit No. 4 Mailers, Written or Oral Ads, and Webpages**

What Is This?



A copy of all sales information, literature, and written material that the telephone solicitor sends to the purchaser as well as all written ads (postcards, mailers, websites) and oral ads (TV or radio spots) that encourage the purchaser to call the telephone solicitor for the purpose of making a purchase. See IDAPA 04.02.02040.11.

- ▶ you sell interests in ***oil, gas, or mineral fields*** or you sell ***precious stones or metals***;

- Written Substantiation of Earnings Claims**

What Is This?



All data substantiating any claims made about the earning or profit potential of purchases of interests in oil, gas, or mineral fields *or* purchases of precious stones or metals. See IDAPA 04.02.02052 & 04.02.02053.

- ▶ you offer ***gifts or prizes*** to purchasers; or

- Exhibit No. 5 Rules/Terms Regarding Gifts, Prizes, or Bonuses**

What Is This?



A copy of all rules, regulations, terms, and conditions a purchaser must meet to receive the gift, prize, or bonus. See IDAPA 04.02.02040.12.

- ▶ you advertise via *mailers, the Internet, TV, or radio* for potential purchasers to call you.

Exhibit No. 4 **Mailers, Written or Oral Ads, and Webpages** (see above)

IV. WHAT IS THE THREE-DAY CANCELLATION RULE?

Idaho law requires telephone solicitors to send the purchaser a written confirmation outlining the purchaser's right to receive a full refund within three business days of the date on which the purchaser receives the written confirmation. The following are frequently asked questions our office receives regarding the three-day rule.

Q. Is the three-day confirmation required in every instance?

- A. No. If the purchaser has an unqualified right to return the goods or cancel the services and receive a full refund from the telephone solicitor, the three-day confirmation is not required.

Q. What if the telephone solicitor offers a 10-day right to cancel?

- A. A 10-day right to cancel is not "unqualified." Because any right to cancel on which the telephone solicitor places limits is a material term or condition of the offer, **any** unqualified right to cancel must be disclosed to the purchaser orally at the time the transaction is finalized and in writing after the transaction is finalized. Telephone solicitors should use notices similar to those printed in Idaho Code § 48-1004(2) and IDAPA 04.02.02.057.

Q. How long do I have to refund the purchaser's money?

- A. The telephone solicitor has 10 business days from the day on which the cancellation notice is received.

Q. How long does the purchaser have to return the goods?

- A. The purchaser has 21 days from the day on which the purchaser receives the full refund. Returns are made at the telephone solicitor's risk and expense.



Telephone solicitors violate the ITSA if they fail to provide purchasers with a written notice containing language identical or substantially similar to the language in Idaho Code § 48-1004(2).

Q. What type of written notice is required?

A. The written notice that must be provided to the purchaser is stated in Idaho Code § 48-1004(2) and in IDAPA 04.02.02057. The Attorney General's Office strongly recommends that all telephone solicitors adopt and incorporate into their business practices the language printed in the statute and the rule.

Q. Does the oral notice differ from the written notice?

Yes. If a sale is completed, the telephone solicitor must orally inform the purchaser of the purchaser's cancellation rights, state the telephone solicitor's registration number, and give the telephone solicitor's full street address and telephone number.

The Attorney General's Office is aware that the language in Idaho Code § 48-1004(2) and in IDAPA 04.02.02057 **must** be altered slightly for use in oral scripts. To assist telephone solicitors in complying with the Idaho Telephone Solicitation Act, an **example of an approved oral disclosure** of the three-day right to cancel is provided below:

Idaho law requires that I inform you about your right to cancel this transaction. If you want to cancel your purchase and receive a full refund, you must do so within three business days of the date on which you receive written confirmation of your purchase.

You can cancel your purchase by [mailing; emailing; faxing] your request to cancel to: [name of telephone solicitor] at [mailing/email/fax address]. [Name of telephone solicitor] must receive your cancellation request no later than midnight on the third business day after the day you receive the written notice.

If you cancel, you will receive a full refund within 10 business days after [name of telephone solicitor] receives your cancellation notice.

Within 21 days of receiving your refund, you must return the items you purchased to the address listed on the written confirmation that you will receive.

Idaho law also requires me to give you my telephone solicitor registration number, which is [registration number],

my complete street address, which is [street address], and my telephone number, which is [telephone number].

Do you have any questions?

V. WHAT HAPPENS TO MY REGISTRATION?

A. What Is the Attorney General's Review Procedure?

The Attorney General's Consumer Protection Division is charged with the responsibility of reviewing, approving, and denying telephone solicitor registrations. The Division also investigates and prosecutes violations of Idaho's registration requirements.

When the Division receives a telephone solicitor's registration application and accompanying materials, the Division typically performs the following tasks within 20 days of receiving the registration:

- Records the Division's receipt of the telephone solicitor's registration form;
- Reviews the telephone solicitor's registration materials for accuracy and completeness; and
- Sends the telephone solicitor:
 - A registration certificate; or
 - A written request for more information or additional documentation; or
 - A written notice informing the telephone solicitor that its registration was denied.

B. Does the Attorney General Retain Registration Applications?

The Consumer Protection Division has a document retention policy that requires the Division to retain a telephone solicitor's registration materials until the end of the most recent registered year, plus five years. **The Division does not retain registration materials received from persons who fail to properly register and, consequently, are denied registration.**

C. Are Registration Materials Considered Public Record?

The Idaho Public Records Act exempts telephone solicitor registrations from disclosure.