

DIRECT MARKETING

This guide offers suggestions on how to give individuals a valid opportunity to refuse to allow personal information concerning them, found in "nominative lists", to be communicated to third parties.

Nominative lists

Nominative lists contain personal information, such as a person's last name, given name, address and, usually, telephone number.

They are useful for all sorts of purposes. They are intended to facilitate commercial prospecting and solicitation by charitable organizations, and are compiled by businesses or transferred by a business operator to a third party under a contract.

Because they contain personal information, users will have to comply with certain rules since July 1, 1994.

Use by a business of its own lists

A business may, without the consent of the persons concerned, use the list of its customers, members or employees for the purposes for which it is drawn up.

An implicit consent exists between the employees and management of a firm and between the members of an association and its executive committee as regards the use of a nominative list.

However, whenever a nominative list is used by the business for commercial or other purposes, the person concerned must be provided with a valid opportunity to refuse to have his name on the list.

The exercise of the right to opt out means that a form letter will have to be prepared so that the person concerned may agree or refuse to allow his name to be entered on the list. For example:

✚ We have taken the liberty of using our list of (customers) (employees) (members) for purposes other than the transaction now in progress to send you this offer. If you want your name, to be deleted from the list, please check the box opposite or call XXX-XXX-XXXX.

✎ We are making you, as a (customer) (member) (employee), the following offer, If you want your name deleted from the mailing list, please check the box opposite or call XXX-XXX-XXXX.

A business may have several affiliated companies or a majority interest in other commercial firms. This is the case in the financial sector where a bank, a stock brokerage firm and an insurance company can be included in the same group.

These companies are authorized to exchange nominative lists provided the person concerned is given the opportunity to agree or refuse to allow personal information concerning him to be used for such purposes.

The following model can be used in this case:

✎ We occasionally transfer the list of our customers to our subsidiaries and to commercial firms which are part of our group. We think that you might be interested in the products and services they offer. If you do not want your name to be on those lists, please check the box opposite.

Use of lists transferred to third parties

A business operator may transfer a nominative list (names, addresses or telephone numbers of natural persons) to another company or business provided.

1. the transfer does not compromise a person's private life;
2. the contract under which the list is transferred contains a clause which forbids use of the list or of certain personal information for purposes other than commercial prospecting or solicitation by charitable organizations;
3. the persons whose names are mentioned on a list of customers or employees of a business or of members of a corporation must be given, before communication, the opportunity to refuse to allow the information to be used by third parties for prospecting purposes.

The person concerned must be given the opportunity to refuse to allow his name to appear on the list is transferred to third parties.

Following are examples of form letters that comply with the obligation to give the person concerned a valid opportunity to have his name on a list that is transferred, lent, exchanged or sold:

✎ Your name, address and telephone number appear on a list that we plan to send to other businesses for commercial prospecting and other purposes. If you want your

name to be deleted from that list, please check the box opposite or call XXX-XXX-XXXX.

- ✎ We occasionally transfer our list of (customers) (employees) (members) to reliable organizations whose products or services might be of interest to you. If you want your name to be deleted from that list, please check the box opposite or call XXX-XXX-XXXX.

A professional corporation may conclude an agreement with a supplier, who becomes its qualified supplier. In that case, the corporation must give the person concerned the opportunity to refuse to allow personal information concerning him to be communicated to that qualified supplier.

- ✎ If you do not wish personal information to be communicated to a business which has concluded an advantageous agreement for all the members of XYZ, please check the box opposite.

Remember that prospecting by means of telecommunications (telephone and fax) entails the obligation for the sender to identify himself and to inform the person concerned of his right to have his name deleted from the prospecting list.

Request for having one's name deleted from a list

A person may, at any time, ask that his name be deleted from a nominative list by making a verbal or written request to this effect. The user of a list should indicate in his correspondence with that person the means he may use to express his lack of interest in future prospecting.

When a request is received from a person who wants his name to be deleted from a list, the user must comply immediately. No further notice should be necessary once a notice of refusal has been given.

One of the following forms could be used:

- ✎ If you no longer wish to receive information about our products or services, please check the box opposite.
- ✎ We have obtained a list of the names of persons who might be interested in our products and services. If you want your name to be deleted from that list, please check the box opposite.

If the name that appears on a nominative list has been communicated or obtained by referral, the following form could be used:

We have learned of your interest in our products and services from a (customer) (employee) (member), who gave us your name and address. If you want your name on our mailing list, please check the box opposite.