



# Newsletter

OCTOBER 2007

## Professional Legal Assistors

22647 Ventura Blvd.

# 504

Woodland Hills, CA 91364-1416

(818)347-0101 / (800)621-7008

Toll Free Fax (888)232-9022

Email: [dottie@biz-usa.com](mailto:dottie@biz-usa.com)

Visit us at

<http://www.biz-usa.com>

Our office will be closed for the following holidays:

November 22 & 23, 2007 – Thanksgiving Day

December 24 & 25, 2007 – Christmas Day

December 31 & January 1 – New Year's Day

Our next newsletter will be mailed out the beginning of January 2008.

Remember if you have an article that you would like to contribute to our newsletter just fax it to us for our review. We must receive the article no later than December 15<sup>th</sup> for our January newsletter.

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## DOCUMENT RETRIEVAL SERVICES

We are proud to announce that we now offer document retrieval services. If we have set up your corporation or LLC and you lose or misplace your Articles of Incorporation or federal taxpayer identification number, we can retrieve these documents for you. The cost is \$50 for 3-day turn around and \$100 for 24-hour turn-around.



## HELLO... HELLO!... HELLO!!...IS ANYONE THERE!!!

There is nothing worse than receiving an unsolicited telemarketing call (usually in the middle of the night) or unsolicited email (i.e., spam) or when you answer your telephone and expect a voice on the other line but only hear a facsimile tone . . . argggghhh!!! Since January, I have received over 60 'junk faxes'. Can we make them stop? Maybe.

The Laws: In 1991, a federal law was passed which makes it illegal to send any unsolicited material transmitted via facsimile. Under the Telephone Consumer Protection Act (TCPA) and Federal Communications Commission (FCC) rules most unsolicited facsimile (fax) advertisements as illegal. In addition, the Junk Fax Prevention Act passed by

Congress in 2005 directs the FCC to amend its rules adopted pursuant to the TCPA regarding fax advertising. If a fax was deliberately sent to you, federal law entitles you to recover a minimum of \$500 and, depending the judge's discretion, up to \$1,500 for each fax you receive. If you received the fax in California after January 1, 2006 and the sender (i.e., the advertiser) is also located in California, then the "established business relationship" exemption does not apply you may obtain double the amount and possibly treble damages (see California Business & Professions Section 17538.43).

To understand these rules, you must first understand the meaning of the terms "unsolicited advertisement" and "established business relationship" (EBR). As defined in FCC rules, 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." Also as defined in FCC rules, 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 with or without an exchange of consideration [payment], 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."

In 2005, however, Congress changed the junk fax law to allow companies that share an EBR with you to send you advertising via fax at your expense until you tell them to stop. Fortunately, some states, like California, have passed laws to restore the original TCPA protections. As of January 1, 2006, the federal "EBR" exemption does not apply to faxes sent within California (California Senate Bill 833). At least one federal case stated that SB 833 does not apply if the advertiser and recipient are in different states.

Generally, fax advertisements may be sent to an EBR customer if the sender also:

- obtains the fax number directly from the recipient, through, for example, an application, contact information form, or membership renewal form; or
- obtains 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
- has taken 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 the sender had an EBR with the recipient and possessed the recipient's fax number before July 9, 2005 (the date the Junk Fax Prevention Act became law), the sender may send the fax advertisements without demonstrating how the number was obtained.

Opt-Out Requirements: Senders of permissible fax advertisements (those sent under an EBR or with the recipient's prior express permission) must provide notice and contact information on the fax that allows recipients to "opt-out" of future faxes. The notice must:

- be clear and conspicuous and on the first page of the advertisement;
- state that the recipient may make a request to the sender not to send any future faxes and that failure to comply with the request within 30 days is unlawful; and
- 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. These numbers and cost-free mechanism must permit consumers to make opt-out requests 24 hours a day, seven days a week.

Senders who receive a request not to send further faxes that meets the requirements listed in the next section must honor that request within the shortest reasonable time from the date of the request, not to exceed 30 days. They are also prohibited from sending future fax advertisements to the recipient unless the recipient subsequently provides prior express permission to the sender.

Opt-out Requests By Consumers: To stop unwanted fax advertisements, your "opt-out" request must:

- identify the fax number or numbers to which it relates; and
- be sent to the telephone number, fax number, Web site address, or e-mail address identified on the fax advertisement.

If you change your mind about receiving fax advertisements, you can subsequently grant express permission to receive faxes from a particular sender, orally or in writing.

Fax Numbers and the National Do-Not-Call List: Registering a home telephone number on the national 'Do-Not-Call' list prevents only telephone solicitations directed to that number, not fax advertisements to your home or business fax number. The FCC's junk fax rules nevertheless prohibit fax advertisements unless you have an EBR with the sender or have given your prior express permission to receive the fax advertisements.

How to Stop (or take action for) Junk Faxes: First, find out who is really sending you the junk fax. Pay particular attention to the top and bottom of the fax. In almost all cases they try to get you to purchase their product. Call the number and try to find out who and where they are (e.g., ask questions about pricing, ask them to fax you a price list or more info, ask for their address so you can send them a purchase order, etc.).

This week I received an insurance related junk fax. I called the number on the fax. Then I received the best run-around story I have ever heard. They wanted me to pay a \$1.00 hold and I'll be billed the full amount next week which was available only that day. I asked for their business information and they hung up on me. I called back and asked for their business information again and they provided me with an address. I researched the address and it does not exist. I called back again and asked for them to mail me some information about their business and they refused unless I made a payment that day. After some more prying they hung up on me again. In the end, I received no information about this company. Surprise . . . surprise!

In short, you will have to bait them into believing you are a real customer. Likely you may not get the name of the company who is sending out the faxes this way. One reliable way to find out who is actually blasting the faxes at you is to use a call trace service. Some trace services 'guarantee' to give you the answer.

If you have multiple faxes that are locally sent from the same place and you can find out the faxing company (and an address), it makes sense to start taking some action by filing an action (small claims). You may be able to get up to \$3,000 (or more) per page for most junk faxes; \$500 per page is the minimum. You can also block them at your fax machine, send demand letters and settlement agreements or request removal from their list. The telephone company will likely not help.

As noted, you can file in small claims court for each junk fax you receive from an advertiser within your state. This is one of the methods (along with class actions) that Congress intended for the law to be enforced. It doesn't cost very much in time or money to do this and chances are very good you'll win if you understand the law and get a competent judge. Anything else will probably not work.

The law was written specifically to enable individuals to enforce the law. If you know the law, you can help rid the country of this nuisance (and you may make some money doing it).

This information has been prepared for general informational purposes. The information is not legal advice and may or may not reflect the most current legal developments.

**For more info contact Christopher Gonzalez, Esq.  
(818)550-8300**

## **Nevada Corporate Filings Reformed**

Nevada is the first state to adopt a requirement that a company's record of beneficial ownership must be maintained and available upon request by the Secretary of State during the course of a legitimate criminal investigation. The entity must further respond to any interrogatories that would assist in the investigation. Companies not complying with the provisions could have their charter suspended or revoked by the Secretary of State. "This legislation strikes at the heart of the fraudulent practices but does not pose a barrier to legitimate commerce," said Secretary Miller. "Law enforcement can now timely obtain the information they need to further investigations of money laundering and terrorist activity, but legitimate enterprises can continue on with business as usual."

Notably, the legislation also makes substantive changes to the state's corporate custodian laws. In an application to the district court to obtain custodianship of a corporation, the applicant must now include detailed disclosure information that must be filed both with the court and the Office of the Secretary of State. Secretary Miller said, "The custodianship reform requires greater disclosure in cases of corporate takeovers so that our judges and public stockholders can more effectively evaluate which situations are legitimate and which are done with nefarious intent. It is an empowering tool to hold accountable those who have fraudulently abused our laws." In testimony before a legislative committee, Secretary Miller cited fraudulent instances where Nevada based stockholders were able to obtain corporate custodianship, issues shares of stock of that corporation and later bilk investors from substantial sums of money, without alerting the officers, directors or shareholders of the troubled corporation.

The reform legislation further allows the Secretary of State to license and inspect Nevada based transfer agents who register securities not traded and regulated by the major markets. It also gives the Secretary of State authority, upon approval of the Attorney General, to examine records of anyone issuing securities that are not properly licensed. "We have seen several high profile instances of 'pump and dump' stock schemes orchestrated by Nevada based entities but controlled outside of our jurisdiction," said Secretary Miller. "The inspection of Nevada based transfer agents will allow us to take preventative steps to protect our investors and effectively enforce our criminal statutes in instances of white collar fraud."

The new laws contained in AB 25 resulted from a Task Force established by Secretary Miller at the start of his term as Secretary of State. "We assembled a group of corporate law, business and law enforcement experts to

develop legislation that would address some of the concerns of the U.S. Senate subcommittee," said Secretary Miller, "and I believe this legislation could become model legislation that other states may want to consider."

Secretary Miller also serves on a Task Force of the National Association of Secretaries of State that is looking at the issues raised by the subcommittee and Nevada's proposed legislation was presented at a recent meeting.

In addition to the substantive reform in AB25, the Secretary of State supported other legislation aimed at curbing fraudulent practices in Nevada. Collectively, these statutes:

- Require any entity filed in Nevada to maintain ownership records in the United States which must be made available to the Secretary of State within three days of a legitimate criminal inquiry. The entity must also respond to any interrogatories issued by the Secretary of State which would assist in the criminal investigation. The Secretary of State is authorized to suspend or revoke the charter of any entity not complying with the requirements
- Authorizes the Secretary of State to license certain Nevada based transfer agents and inspect any necessary records
- Requires substantial disclosure requirements be filed in District Court and with the Office of the Secretary of State before a stockholder can be appointed custodian of a troubled corporation. The applicant also must provide detailed evidence showing attempts to contact the officers, directors and

shareholders of the corporation for which custodianship is sought.

- Allows the Secretary of State, upon approval of the state Attorney General, to inspect the records of anyone issuing unlicensed securities.
- Prohibits the use of controversial "bearer shares," which allow the trading of company stock in bearer form by attributing stock ownership to whoever physically holds the shares.
- Allows the Secretary of State to craft regulations to address fraudulent or false filings filed with the Office of the Secretary of State.

Secretary of State Miller's office will be conducting regulation workshops and hearings later in the year detailing the processes relating to AB25 and other business related legislation.

Secretary Miller further announced the assignment of Investigator Chris Young as the office's "Commercial Filings Enforcement Officer." Investigator Young will assist law enforcement agencies in their investigation of Nevada based entities.

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**There is a wonderful mythical law of nature that the three things we crave most in life – happiness, freedom and peace of mind – are always attained by giving them to someone else.**

**General Peyton C. March**

Professional Legal Assistors  
22647 Ventura Blvd.  
# 504  
Woodland Hills, CA 91364-1416

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FIRST-CLASS  
MAIL  
U.S. POSTAGE  
PAID  
CANOGA PARK  
91304  
PERMIT No. 490