

New Door-to-Door Contract Restrictions in Ontario

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Bill 59, *Putting Consumers First Act (Consumer Protection Statute Law Amendment)*, 2017 (Bill 59), received Royal Assent on April 13, 2017. Bill 59 makes various amendments to the *Consumer Protection Act* (Ontario) (the Act), including to the provisions related to door-to-door agreements. We previously reported on Bill 59 in our e-lert “Ontario Bill to Regulate Alternative Financial Services, Ban Certain Door-to-Door Sales, and License Home Inspectors.”

Regulatory amendments to the Act will become law in Ontario on March 1, 2018, implementing the door-to-door agreement restrictions passed in Bill 59.

No Door-to-Door Agreements for Certain Goods and Services

With certain exemptions, suppliers (e.g., persons engaging in transactions with consumers) will be prohibited from soliciting or entering into agreements (Restricted Agreements) at a consumer’s home (or any other place as may be prescribed by the Act) for any of the following goods and services (Restricted Goods and Services):

- Furnaces
- Air conditioners
- Air cleaners
- Air purifiers
- Water heaters
- Water treatment devices
- Water purifiers
- Water filters
- Water softeners
- Duct cleaning services
- Any goods or services that are a combination of or that perform the functions of the goods or services listed in 1 to 10 above (e.g., bundles of such goods or services (HVAC)).

What Constitutes “Solicitation”

Leaving marketing materials at the consumer’s home without attempting to make contact is not considered solicitation (e.g., leaving the materials at the doorstep). Notwithstanding this exception, suppliers should be mindful of “no flyer” notices posted at consumers’ homes. Additionally, suppliers should be cognizant of the

unfair practices section of the Act, which prohibits false, misleading, deceptive or unconscionable representations. If the marketing materials left at the consumer's home contain any such representations, then such marketing materials will constitute solicitation – in contravention of the Act.

Other exceptions to the solicitation prohibition may be prescribed by the Act.

Exemptions from the Door-to-Door Restriction

The prohibition on entering into Restricted Agreements does not apply if the consumer initiates contact with the supplier and has specifically requested that the supplier come to the consumer's home for the purpose of entering into the agreement.

Additionally, the restriction will not apply in the following circumstance (a Supplier Exemption): (i) a written consumer agreement is in effect for the Restricted Goods and Services; (ii) the supplier initiates contact with the consumer for any reason and by any means of communication (other than in person at the consumer's home) and the consumer asks the supplier to come to the consumer's home; and (iii) during such supplier-initiated communication, the supplier asks the consumer if the supplier can, while at the consumer's home, solicit a Restricted Agreement while at the consumer's home, and the consumer so agrees.

Meaning of “Consumer-Initiated”

A consumer has initiated contact and specifically requested a supplier attend the consumer's home to enter into a Restricted Agreement in the following circumstances:

- Where the consumer initiates communication and specifically asks the supplier to come to the consumer's home to enter into a Restricted Agreement either (i) by mail, fax, phone, electronic communication; or (ii) at the supplier's business, a market place, auction, trade or agricultural fair, or exhibition.
- Where a consumer responds to a supplier-initiated communication to specifically request the supplier come to the consumer's home to enter into a Restricted Agreement, except if the communication by the supplier has been made in person at the consumer's home or during a supplier-initiated phone call.
- Where (i) a written agreement is in effect for the Restricted Goods and Services; (ii) the consumer initiates contact with the supplier for any reason by any means of communication and asks the supplier to come to the consumer's home; and (iii) during such consumer-initiated communication, the supplier asks the consumer if the supplier can, while at the consumer's home, solicit the consumer to enter into a Restricted Agreement, and the consumer so agrees.

Where a supplier receives data, directly or indirectly, from measuring or monitoring devices in the consumer's home, outside of the circumstances described above or pursuant to a Supplier Exemption, this

will *not* constitute consumer-initiated contact.

Record-Keeping Requirement

Suppliers who enter into Restricted Agreements after consumer-initiated contact will be required to maintain records of that contact for three years from the date of the Restricted Agreement. Additionally, a supplier that falls under the Supplier Exemption must also maintain records of that supplier-initiated contact for 3 years from the date of the Restricted Agreement.

Effect of Contravention

Any Restricted Agreement and related agreement (e.g., security agreement) will be void and unenforceable. The goods or services provided under such void agreements will be deemed unsolicited goods or services under the Act (meaning that the consumer will not be responsible for the use or disposal of the Restricted Goods and Services).

Additionally, the supplier will be responsible for any third party charges the consumer incurs related to the void agreement (e.g., charges related to the removal or return of the goods) and will be liable for reimbursing the consumer for such charges. Consumers will have the right to court action to recover these charges and can set off the amount recovered against any amounts owed to the supplier under any other consumer agreement between the supplier and consumer (other than a Restricted Agreement).

Changes to Water Heater Agreements; New Disclosure Requirements for Restricted Agreements

The cooling-off period for *all* direct agreements is now 10 days after the consumer has received a written copy of the agreement. Previously, direct agreements for the supply of water heaters had a 20 day cooling-off period.

While the rules specific to supplier-initiated agreements for the supply of water heaters will be repealed, (e.g., the requirement to make verification calls), it is anticipated that additional regulations will be published early 2018, prescribing disclosure for Restricted Agreements, using plain language, and that these requirements will be similar to the current requirements for water heater agreements.

Suppliers should understand their obligations and the new requirements under the regulatory amendments, and review their procedures and documentation to ensure compliance.

For more information, please contact Suhuyini Abudulai or any member of our Banking, Lending & Specialty Finance Group.

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