

Saying good-bye to spam

New federal anti-spam legislation coming

The new *Fighting Internet and Wireless Spam Act (FISA)* (Bill C-28) was signed into law on December 15, 2010.



The goal of the legislation is to stop unwanted spam and to address Canadian's concerns about online privacy and personal security, including identity and credit card theft, fraud, and the unauthorized collection of personal information.

The legislation was introduced in May, 2010 and is the updated version of the April, 2009 Bill C-27: *Electronic Commerce Protection Act*, which lapsed when Parliament was prorogued in December, 2009.

FISA amends four Acts concerned with telecommunications regulation, competition and privacy. They are the *Canadian Radio-television and Telecommunications Commission (CRTC) Act*, the *Competition Act*, the *Personal Information Protection and Electronic Documents Act (PIPEDA)* and the *Telecommunications Act*. The CRTC is the main regulator for FISA. The Commissioner of Competition and the Privacy Commissioner have enforcement roles.

New regulations coming

Industry Canada is currently consulting with stakeholders while FISA regulations are being drafted. Regulations are expected sometime later this year when the legislation comes into force.

The exact date of implementation is not yet known.

The Canadian Real Estate Association has actively represented the interests of REALTORS® during the legislation's drafting and will continue to advance REALTOR® concerns during the drafting of regulations.

What does FISA cover?

FISA applies to unsolicited email and instant messages sent on phones and computers, and messages sent over Facebook, Twitter and more recent applications and technology.

Electronic messages include text, sound, voice or image, voice mail and web cam messages and the exchange of pictures or graphic files.

FISA also covers threats from unsolicited electronic contact and unauthorized access to computer systems and the unauthorized compilation of electronic addresses.

New Rules

FISA sets out new rules for how business collects, uses and discloses personal information. PIPEDA continues to govern how an organization may and may not collect personal information:

- Consent is required unless the information is publicly available.
- The organization collecting the information must state the purpose for which it will use the information.

What should REALTORS® do now? Start planning.

1. Review your contacts database or list. You can send unsolicited email to contacts who have given you consent.

2. If you have "implied" consent, you can send unsolicited messages. You have implied consent if:
 - you have an existing business relationship with the recipient and have done business with them in the last two years. (Note: CREA successfully had this increased to two years from 18 months);
 - the recipient has prominently published their electronic business address; or
 - the recipient has provided their email address directly to you.
3. You must identify yourself or indicate on whose behalf you're sending the electronic message. You must include up-to-date contact information, and you must include an "unsubscribe" mechanism. If someone unsubscribes, you must stop emailing them without delay and no later than 10 days.

What is a business relationship?

If you assume you have implied consent because of an existing business relationship, you must meet one of the following:

- You sold, leased or bartered a product, goods, services, land or an interest or right in land to the recipient within two years before the message was sent;
- You provided a business, investment or gaming opportunity that was accepted by the recipient within the preceding two years;
- You entered into a written contract, still active or which expired within the preceding two years; and
- You received any kind of inquiry from the recipient within the previous six months.

Note: a purchaser of a business inherits its existing business relationships.

Penalties

The legislation will be enforced by the Canadian Radio-television and Telecommunications Commission (CRTC), the Competition Bureau Canada and the Office of the Privacy Commissioner of Canada.

The CRTC can impose penalties up to \$1 million for individuals and \$10 million for organizations who violate the legislation.

Email recipients and businesses can also take civil action against you.

FISA also spells out a new private right of action for anyone who alleges they have:

- been affected by a breach of the Act;
- been the target of false or misleading electronic messages;
- had an electronic address obtained without consent; or
- had personal information obtained through access by a computer system without authorization.

Continued on page four