

Legal Connections



LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

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While our doors remain closed, we continue to serve the community online: cbalaw.org

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IN THE RUSH TO ADAPT, BUSINESSES CANNOT TURN A BLIND EYE TO COMPLIANCE

The COVID-19 pandemic has presented most businesses with a stark decision: adapt or risk closing your doors permanently. Many have been able to quickly adapt their operations to face the new reality. Restaurants have adjusted menus and implemented online ordering, auto dealers have established contact-free purchase and delivery processes for transactions, and sellers have moved from in-person or door-to-door sales models to outbound telemarketing calls and text messages. Impressively, changes that normally might have taken months to plan and execute have been implemented on the fly over a week or even days.

However, in the rush to implement these new business practices, companies may have jumped out of the proverbial frying



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pan and into the fire. These new practices may not have been fully vetted from a compliance standpoint, and legal risks and potential class action liability could be lurking in the shadows.

As businesses begin to realize unexpected efficiencies or improved processes born out of necessity, changes that were originally thought to be temporary may become permanent adjustments to their business model. In looking at these trial-by-fire changes, a business would be wise to consider the associated compliance issues.

In particular, the emerging trend is for businesses to rely less on face-to-face interaction with consumers, as they move toward telephone and text messaging-based communications. If you find yourself in this circumstance, you should

ensure that your new or expanding calling/texting campaigns consider the following:

- Whether you have obtained the proper consent for the call/text;
- That you are complying with state and federal do-not-call lists, and to the extent that you are not scrubbing against those lists, that calls/texts are properly exempt from those requirements;
- Whether you are required to register as a telemarketer in each state that you intend to call or text; and
- That you have a robust process in place to honor consumers' requests to not be called.

Also remember that email communication with your customers presents its own set of regulatory schemes, including the federal CAN-SPAM Act, which imposes certain requirements on commercial emails, as well as state and federal unfair or

deceptive acts or practices laws. Any corresponding changes to the collection, use and sharing of consumers' personal information must also be evaluated.

Even businesses with robust compliance systems in place may see their existing policies and procedures strained by the loss of control brought by a more decentralized workforce. Previously maintained safeguards to ensure compliance with telemarketing restrictions when employees are dialing from company equipment and enterprise systems may not be sufficient when employees are making these calls from their cellular or home phones.

While businesses have faced daunting and unanticipated challenges in recent months, there will unquestionably be more to come as they return to a "new normal." What has been constant is the regulatory oversight of business practices. There should be no expectation that regulators, consumers or courts will turn a blind eye to violations, even unintended ones. A proactive review and audit of your post-COVID compliance plan can help ensure that your business remains on solid ground. ■

GET YOUR NOTARY LICENSE NOW WITH THE CBA'S ONLINE CLASSES: CBALAW.ORG/NOTARY

ONLINE LEGAL SERVICES CAN LEAVE YOU WANTING

Over the past several years, purchasing items online has become more commonplace. It is true, you can pretty much buy anything online. You can even order groceries and have your favorite restaurant deliver to your doorstep. When we order from our favorite restaurant, we can order the "special" – that dish that is made the same way every time – or a "made to order" dish. They are both great, but the "special" (the "one-size-fits-all") isn't for everybody. There are times when we all want that delicious "made-to-order" meal made in accordance with our preferences.

Legal services can also be purchased



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online, including estate planning packages. A person can get the "one-size-fits-all" estate plan but not all plans are the same. Each client has unique circumstances – and each estate plan should address those different variables. An effective estate plan is "made to order."

We are using technology more than ever. With that being said, we are not limited to the "one-size-fits-all" or the "special." We can have a customized estate plan like we can have that highly customizable dish from our favorite restaurant.

Clients are quick to articulate their wants, goals and concerns. However, that may not be enough. An attorney

can fill in the gaps by asking more detailed questions. Simply relying on online services, without the consultation of an attorney, may leave gaping holes that may undermine the client's goals.

For example, a Power of Attorney created from an online form may provide too much power to the agent (i.e. unlimited gifting powers), or it may not provide any gifting powers at all (which may make planning for long-term care incredibly difficult if capacity is lost). Each individual client should direct his/her attorney on the scope of authority for the Power of Attorney – and it may be a compromise position with checks and balances in place.

Similarly, some estate plans deal heavily with tax planning, others do not require it. Knowing if tax planning is

needed requires a keen understanding of current tax law. Additionally, some families want an inheritance to be received by a loved one at a particular age, or only allow them to be their own trustee at a certain age. Lastly, special needs considerations may need to be explored, especially since an inheritance could leave the beneficiary ineligible for means tested benefits that they have been receiving. These answers are far from "standard" and vary from client to client.

An attorney should be consulted to address specific needs. An estate plan should be "made-to-order" with the client's goals, wants and desires in mind. ■



VIRTUAL ORAL ARGUMENTS

TIPS FROM JUSTICE FRENCH

May 21, 2020 12:00pm–1:00pm on Zoom

CBA PRESENTS LIVE WEBINAR WITH JUSTICE FRENCH

Justice Judith French (Ohio Supreme Court) will present a live CLE webinar on May 21 from noon-1pm for the Columbus Bar Association. She'll offer tips on presenting virtual oral arguments when a live appearance isn't possible. Approved for 1.0 hour Live CLE credit (with 0.5 Professional Conduct).

Register:

www.cbalaw.org/cle

