



Direct-Marketing Guidelines

There are degrees of acceptable conduct when marketing and advertising the legal services provided by a firm or solicitor; from the accepted practice of exchanging business cards to the unacceptable conduct of “ambulance-chasing” e.g. touting for potential clients in such places as hospitals, funeral homes or cemeteries.

It is for this reason that specific forms of firm promotion cannot be broadly prohibited as it may be an acceptable practice in one set of circumstances and unacceptable in another. What determines the acceptable/unacceptable distinction is determined by the individual promotion strategy and the conduct of the firm or solicitor in executing that strategy in a particular set of circumstances.

1. Direct-marketing (touting or solicitation for business) is the practice of a legal firm contacting members of the public seeking information as to whether they may require legal assistance without having had a previous solicitor/client relationship or any prior dealings with that person.
2. Direct marketing includes communication via telephone (“cold-calling”), in person and mail-out (letters, brochures and emails).
3. Firms or solicitors (including staff) engaged in any form of direct-marketing should comply with the *Legal Profession Uniform Law 2015 (Victoria)*,¹ and *Legal Profession Uniform Law Australian*

Solicitors’ Conduct Rules 2015,² National Privacy Principles, Model Codes on Direct Marketing and any other relevant legislation including the *Spam Act 2003*, the *Competition and Consumer Act 2010* or equivalent state legislation.

4. Firms or solicitors engaged in direct-marketing must not use undue influence, coercion, or duress, or be involved in harassment or nuisance. Factors to be considered by the firm or solicitor when promoting the firm’s or solicitor’s services include:
 - (a) the prospective client’s sophistication regarding legal matters; and
 - (b) whether the physical, emotional and mental state of the person is such that the person is capable of exercising reasonable judgment in engaging a firm or solicitor; and
 - (c) the situation and circumstances where the promotion is undertaken.
5. The principal of a law practice is required to monitor at all the times the conduct of staff (including non-legal staff)³ involved in the practice of direct-marketing. If the staff engaged in direct-marketing are not legally qualified they must not provide legal advice.⁴
6. Firms or solicitors (including staff) engaged in direct-marketing must not be disparaging of other members of the profession and must ensure that the

² *Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015*, Rule 36.

³ *Legal Profession Uniform Law 2015 (Victoria)*, Section 35

⁴ *Legal Profession Uniform Law 2015 (Victoria)*, Section 10.

¹ *Legal Profession Uniform Law 2015 (Victoria)*, Section 11

ETHICS GUIDELINES

- standards of conduct expected from members of the legal profession are upheld.
7. Where initial contact is made between the firm and the potential client, no confidential information should be sought regarding the specific details of the potential client's matter and no legal advice provided until;
 - (a) a conflict check has been completed to ensure that the firm or solicitor is able to act for the potential client; and
 - (b) the firm or solicitor reasonably believes that the potential client is competent to employ the services of the firm; and
 - (c) the firm or solicitor is able to act with competence and diligence in undertaking legal services for the potential client; and
 - (d) an interview has been scheduled between the firm or a solicitor and the potential client.
 8. The firm or must ensure that an engagement letter and cost disclosure is fully explained to the client.
 9. All firms or solicitors (including staff) engaged in any form of direct-marketing must advise all potential clients that they have a 'cooling-off period' from the date of engagement consistent with the relevant provisions of the *Competition and Consumer Act 2010* or equivalent state legislation.
 10. Firms or solicitors who engage in direct-marketing should have an internal complaints handling procedure that meets the standard set out in the Australian Standard for Complaints Handling.
 11. Only principals and staff directly employed by a firm or solicitor may engage in direct-marketing (no outsourcing of callers is permissible), on behalf of and at the direction of the principal or solicitor.
 12. The practice of direct-marketing may only be carried out between 9am and 6pm Monday to Friday (and not on public holidays).

How can we help you?

Visit the Ethics & Professional Practice Department's website at:
<http://www.liv.asn.au/Professional-Practice/Ethics>

These are guidelines only and do not have the force of law. A solicitor must comply with the *Legal Profession Uniform Law (Victoria)* and the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*.

Solicitors who engage in direct-marketing need to comply with Federal and State Laws.

Please refer to the Advertising Guidelines for further guidance.

To discuss concerns relating to direct-marketing, contact the Ethics & Professional Practice Department on (03) 9607 9336.

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