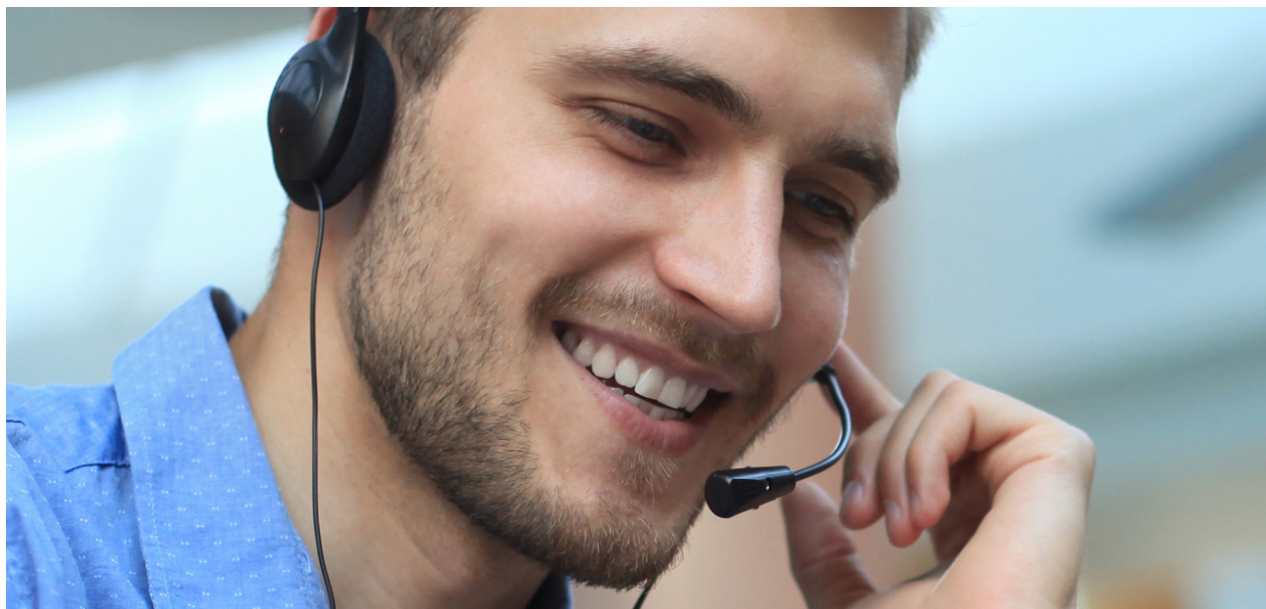


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Do You Know Who You Are Calling?

Your phone marketing strategy could land you in legal trouble.

July - August 2019 | by Jonathan Waclawski

As a real estate professional, you're constantly looking to grow your business. While picking up the phone to call potential clients and solicit new business may seem outdated in today's digitized world, the reality is that the telephone still plays an important role in marketing. In fact, using your phone to send text messages to potential clients is more common than ever. But also becoming more popular are class-action lawsuits alleging violations of the Telephone Consumer Protection Act.

The TCPA is a federal statute, premised on protecting residential and personal telephone numbers from telemarketing and autodialed calls. Two primary restrictions are at the heart of the law. The first prohibits telemarketing calls to numbers registered with the national Do Not Call Registry. The second requires a caller to obtain written consent before using an autodialer to send telemarketing text messages or calls, even when the number called is not on the DNC registry.

In the 17 months after the Federal Communications Commission's July 2015 order clarifying TCPA rules, 3,121 lawsuits were filed, targeting U.S. businesses of all kinds, a 46 percent increase from the 17 months prior to the clarification. And aggressive plaintiffs' attorneys are increasingly focused on real

estate in class-action TCPA litigation. In April, a consumer sued a California brokerage alleging the brokerage violated the TCPA by making unsolicited autodialed calls to consumers without their consent, including to consumers registered on the Do Not Call list. These lawsuits can be expensive, as the TCPA provides for statutory damages ranging from \$500 to \$1,500 per violation. While plaintiffs more often target deep-pocketed brokerages, individual agents are not inherently protected.

Learn how to ensure your phone call marketing plans comply the TCPA's do-not-call registry restrictions in this short video.

How to Avoid Being Sued

Protect yourself by ensuring the numbers you text or call are not included on the DNC list.

Adopt a written policy that includes these requirements:

- Check your call lists every 30 days against the Do Not Call list (available at telemarketing.donotcall.gov).
- Record consumer removal requests, and add removed numbers to an internal company do-not-call list.
- Honor do-not-call requests promptly (no later than 30 days from date of request) and for a minimum of five years.

While many states have elected to use the national Do Not Call list as their statewide registry, 12 states maintain separate registries. Therefore, if you make telemarketing calls or send text messages in Colorado, Florida, Indiana, Louisiana, Massachusetts, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Texas, or Wyoming, make certain you are aware of any state-specific do-not-call restrictions, and scrub call lists against the state lists in addition to the national registry.

Next, before texting or calling people with marketing messages, get their written consent. Consent is best achieved through a written agreement that is signed by the consumer (an electronic signature is sufficient). The agreement should include the consumer's phone number and state that the consumer authorizes you to place telemarketing calls to the consumer. It should also disclose that the consumer is not required to sign the agreement as a condition of purchasing any property, goods, or services.

Practically speaking, this consent can be incorporated into existing methods of acquiring potential client contact information, such as open house sign-in sheets. But you must let consumers revoke their consent and opt out of receiving future texts or calls.

Review your telemarketing text and call methods to ensure you're in full compliance with the TCPA. It's never too late to protect yourself and your business against the growing threat of costly litigation.



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