



FloridaRealtors®

The Voice for Real Estate® in Florida

Do Not Call/Text Update

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Antitrust Reminder

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Florida REALTORS® is committed to conducting all meetings and events in a professional, ethical, and lawful manner, including in adherence to all antitrust laws. To that end, the topics for this meeting will focus on advancing the interests of real estate professionals and consumers of real estate services, increasing competition, reducing risk for all parties involved in real estate transactions, and sharing insights on business best practices.

The following discussion topics are always prohibited: agreements to fix prices, limit product or service offerings, allocate geographical territory or customers, and refuse to deal. Any discussion inconsistent with this policy will not be tolerated.

What are we talking about today?

- ▶ Telephone Consumer Protection Act (TCPA)
- ▶ Florida Telephone Solicitation Act (FTSA)
- ▶ Do Not Call Registries
- ▶ Updates
- ▶ Best Practices



Why are we still talking about TCPA?

- ▶ TCPA still applies; only provisions that were to be implemented in January were halted
- ▶ Florida Telephone Solicitation Act (FTSA) is applicable and is a source of liability for your businesses



Telephone Consumer Protection Act

Federal Law



Telephone Consumer Protection Act (TCPA)

- ▶ What is it?
 - ▶ Enacted in 1991
 - ▶ A Federal law that regulates telemarketing communications (including calls, texts, and faxes)
 - ▶ Limits the use of automatic dialing systems and prerecorded voice messages without sufficient express consent
 - ▶ Prohibits unsolicited calls to numbers on the National Do Not Call Registry
 - ▶ Forbids telephone solicitations before 8 a.m. and after 9 p.m.

TCPA - Terms of Art

- ▶ **Automatic telephone dialing system (ATDS)/ Autodialer** - equipment which has the capacity to
 - ▶ store or produce telephone numbers to be called using a random or sequential number generator AND
 - ▶ to dial such numbers
- ▶ **Telephone solicitation** - the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, which is transmitted to any person, but such term does not include a call or message:
 - ▶ To any person with that person's prior express invitation or permission
 - ▶ To any person with whom the caller has an established business relationship
- ▶ **Unsolicited advertisement** - any material advertising the commercial availability or quality of any property, goods, or services, which is transmitted to any person without that person's prior express invitation or permission in writing or otherwise.

TCPA - What Does it Cover?

- ▶ TCPA regulates telemarketing calls, text messages, and fax communications.
- ▶ Some Exemptions:
 - ▶ Manually dialed calls with no pre-recorded message
 - ▶ Calls made for emergency purposes
 - ▶ Calls not made for a commercial purpose
 - ▶ Keep in mind the Do Not Call list may still be applicable

TCPA - Robocalls

- ▶ Robocalls are calls made with an autodialer or that contain a prerecorded or artificial voice message
- ▶ Robocall consent:
 - ▶ Must be **written consent** before a prerecorded **telemarketing call** to your **home or wireless number**
 - ▶ **Verbal or written consent** needed before an autodialed or prerecorded **call or text** to a **wireless number**
- ▶ *NOTE: FCC has declared that calls made with AI or AI-generated voices are considered “artificial” voice calls under the TCPA, making voice cloning technology used in common robocall scams targeting consumers illegal absent prior consent or a recognized exemption.*

What is Consent?

- ▶ TCPA statute itself does not define “prior express consent”
- ▶ Looks to the FCC to interpret TCPA rules
- ▶ FCC interprets TCPA “prior express consent” to mean “prior express written consent” in the context of robocalls
- ▶ FCC Regulations define “prior express written consent” as:
 - ▶ An agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered

FCC - Let's Break Down "Prior Express Written Consent"

- ▶ When do we need it?
 - ▶ For calls made with an autodialer or artificial or prerecorded voice to cell phones or residential lines via artificial or prerecorded voice
- ▶ How do we get it?
 - ▶ Written agreement
 - ▶ Signed - which can be electronically, including but not limited to:
 - ▶ Website form with click button affirming consent
 - ▶ Email
 - ▶ Text
 - ▶ Telephone keypress
 - ▶ Is not a requirement to doing business

TCPA - Robotexts

- ▶ The FCC rules ban text messages sent to a mobile phone using an autodialer **unless** you previously gave consent to receive the message, or the message is sent for emergency purposes
 - ▶ For commercial text messages, consent must be in writing
 - ▶ The ban applies even if the person has not placed their mobile phone number on the National Do Not Call Registry

TCPA - Opt Out of Autodialed Calls

- ▶ FCC rules require telemarketers to allow a person to opt out of receiving additional telemarketing robocalls immediately during a prerecorded telemarketing call through an automated menu



TCPA - Established Business Relationship Exemption & DNC

Exemption 1

- ▶ A prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber;
- ▶ With or without an exchange of consideration, on the basis of the subscriber's purchase or transaction;
- ▶ With the entity within the 18 months immediately preceding the date of the telephone call.

OR

Exemption 2

- ▶ On the basis of the subscriber's inquiry or application regarding products or services offered by the entity;
- ▶ Within the three months immediately preceding the date of the call;
- ▶ Which relationship has not been previously terminated by either party.

TCPA - Suit and Damages

- ▶ Primarily enforced through private right of action- allows individuals to sue
- ▶ Federal Communications Commission, Federal Trade Commission and state attorneys general all have enforcement powers
- ▶ **Damages**
 - ▶ Standard penalty is \$500 PER VIOLATION
 - ▶ For known or willful violations, penalty is \$1500 PER VIOLATION

Examples of Costs of Litigation Based on TCPA Violations

- ▶ February 2025 Case from California relief sought -
 - ▶ \$1000 statutory damages for 2 calls/texts and costs of \$596.74 = \$1596.74
- ▶ Ninth Circuit Class Action Case -
 - ▶ 1,850,440 automated calls placed between 2012 and 2015 x \$500 each = \$925,218,000
- ▶ In 2023 a Florida court approved a \$40 million settlement by a privately held real estate company. The settlement included changes to business practices, provide training, and more.
 - ▶ Takeaway: TCPA litigation can be incredibly costly and time consuming.

FCC Approximate Number of Consumer Complaints the Last Few Years

For unwanted and illegal voice calls:

- ▶ 2021: 149,300
- ▶ 2022: 100,100
- ▶ 2023: 84,500
- ▶ 2024: 51,700 as of August 6, 2024

FCC Approximate Number of Consumer Complaints the Last Few Years

For unwanted and illegal text messages:

- ▶ 2021: 15,300
- ▶ 2022: 18,900
- ▶ 2023: 12,000
- ▶ 2024: 15,600 as of August 6, 2024



NAR Resource

NAR Legal Affairs

TCPA QUICK REFERENCE GUIDE



Before you contact a consumer, make sure you have the proper consent under the Telephone Consumer Protect Act (TCPA).

Contacting a consumer on their	Using this type of technology	With this kind of message Needs this type of consent	
		MARKETING	INFORMATION
 CELLPHONE	Auto-dialed calls and texts	Prior express <u>written</u> consent*	Prior express consent, oral or written
	Artificial or pre-recorded voice	Prior express <u>written</u> consent*	Prior express consent, oral or written
 RESIDENTIAL LANDLINE	Auto-dialed calls	None required	None required
	Artificial or pre-recorded voice	Prior express <u>written</u> consent*	None required

*A written agreement that includes the consumer's telephone number, authorizes telemarketing and is not required as a condition of purchase or doing business.

LEARN MORE @ www.nar.realtor/telemarketing-cold-calling

Additional NAR Resource

- ▶ NAR has a link on their website
 - ▶ Do Not Call Registry: Creating an Office Policy
 - ▶ <https://www.nar.realtor/legal/complying-with-federal-regulations/do-not-call-registry/creating-an-office-policy>
- ▶ This is a STARTING POINT, not the end product. In Florida, we must comply with the Florida Telephone Solicitation Act also.

Florida Telephone Solicitation Act

State Law - AKA mini-TCPA

Florida Telephone Solicitation Act (FTSA) Overview

- ▶ Enacted in 1987 (predating the TCPA)
- ▶ State law that regulates telemarketing practices in the state of Florida
- ▶ Prohibits unsolicited calls and texts to Florida residents registered on DNC Registry
- ▶ Requires consent for calls and texts placed by an autodialer

Florida Telephone Solicitation Act (FTSA)

Overview Continued

- ▶ Enforced by Florida Department of Agriculture and Consumer Services
- ▶ Updated in 2021
 - ▶ Allowed private cause of action for citizens to sue for receipt of unwanted phone calls & text messages sent in violation of the statute
 - ▶ Flurry of litigation - individual and class action suits filed
- ▶ Later updated in 2023 to address rising litigation

FTSA - When Does it Apply?

- ▶ FTSA applies when:
 - ▶ A telephone solicitor
 - ▶ Doing business in this state
 - ▶ Who makes or causes to be made telephonic sales calls including, but not limited to, calls made by automated dialing or recorded message devices

FTSA - Who is a Telephone Solicitor?

- ▶ A telephone solicitor is defined as:
 - ▶ Natural person,
 - ▶ Firm,
 - ▶ Organization,
 - ▶ Partnership,
 - ▶ Association,
 - ▶ or Corporations,
 - ▶ or Subsidiary or affiliate thereof,
 - ▶ doing business in this state,
 - ▶ who makes or causes to be made telephonic sales call including, but not limited to, calls made by automated dialing or recorded message devices
- ▶ **THIS MEANS YOU!**
- ▶ *Florida Statute 501.059(1)(i)*

FTSA - Doing Business in this State?

- ▶ **Doing business in this state means:**
 - ▶ Calls from Florida or other states to consumers located in Florida
 - ▶ Caller can be anywhere!
 - ▶ Presumption that telephonic sales call made to any area code in Florida is made to a Florida resident (consumer) OR to a person in this state at the time of the call
 - ▶ EX. Consumer moved to Georgia but still has a phone number in a Florida area code - per FTSA could be considered a consumer in Florida
 - ▶ Ask yourself: Where is the consumer?

FTSA - Types of Calls

- ▶ Telephonic sales calls means:
 - ▶ A telephone call
 - ▶ Text message
 - ▶ Voicemail transmission (tech that delivers a voice message directly to a voicemail app, service, or device)
 - ▶ To a consumer for the purpose of soliciting a good or service
- ▶ Unsolicited Telephonic Sales Calls means a telephonic sales call other than a call made:
 - ▶ In response to an express request of the person called
 - ▶ To a person whom the telephone solicitor has a prior existing business relationship

FTSA - Autodialers / Robocalls

- ▶ An automated system for the selection and dialing of telephone numbers

OR

- ▶ The playing of a recorded message when a connection is completed to a number called without prior express written consent of the called party
- ▶ Not defined as using your own phone and dialing one phone number at a time.
 - ▶ Still need to check the DNC lists

FTSA - What is Required When I Make Calls?

- ▶ When using an automated system to make solicitation calls you must have:
 - ▶ Prior express written consent
 - ▶ In a written agreement
 - ▶ Signed by the party to be called by the telephone solicitor

FTSA - Prior Express Written Consent

- ▶ **Prior express written consent** as defined in F.S. 501.059(1)(g)
 - ▶ A written agreement that bears the **signature** of the called party;
 - ▶ Clearly authorizing the person making or allowing placement of a telephonic sales call by phone/text/voicemail transmission to deliver or cause to be delivered to the called party a **telephonic sales call** using an **automated system for the selection and dialing of telephone numbers**, the playing of a recorded message when a connection is completed to a number called, or the transmission of a recorded voicemail;
 - ▶ Includes the telephone number to which the called party authorizes a telephonic sales call to be delivered; and
 - ▶ Includes a clear and conspicuous disclosure informing the called party that
 - ▶ By executing the agreement that the called party authorizes the person to do what is stated above
 - ▶ Is not required to sign the written agreement as a condition (directly or indirectly) of purchasing any property, goods, or services

FTSA - Prior Express Written Consent

Let's Break it Down

- ▶ Written agreement giving prior express consent BEFORE making any such call
- ▶ Signed
 - ▶ The definition of “Signature” per Section 501.059(1)(h) now recognizes
 - ▶ electronic or digital signatures &
 - ▶ an act demonstrating express consent - such as checking a box indicating consent, or responding affirmatively to a text message, ad campaign, or an email solicitation
- ▶ Telephone number you will be calling
- ▶ Include a clear and conspicuous disclosure in the written agreement:
 - ▶ By executing the agreement, the called party authorizes the person making or allowing placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection and dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a recorded voicemail;
 - ▶ Called party not required to sign written agreement or agree to enter into an agreement as a condition to purchase any property, goods, or services

FTSA - Prior Express Written Consent Revoked

- ▶ Just as consent can be given, it can be taken away
 - ▶ For example, if a buyer gave prior express written consent to be called and then later change their mind later, they can revoke consent
- ▶ Revocation can happen in many ways, including but not limited to:
 - ▶ Text message directing to stop
 - ▶ Email
 - ▶ Phone call
- ▶ Once consent is revoked, honor this immediately
- ▶ **Text messages** - within 15 days (calendar days) after notice to stop texting - you must stop
- ▶ *NOTE: Document the revocation and add them to your internal DNC list*

When is the FTSA Violated?

Florida Statute 501.059(8)

▶ Violations occur when:

- ▶ Make or knowingly allow unsolicited telephonic calls using an automated system for the selection and dialing of telephone numbers or playing of a recorded message when a connection is completed without prior express written consent of the called party
- ▶ Unlawful for any person who makes telephonic sales call or causes a call to be made to fail to transmit the originating telephone number, or if telephone solicitor is using a carrier...
- ▶ Unlawful to intentionally alter the voice of the caller in an attempt to disguise or conceal the identity of the caller in order to defraud, confuse, or financially or otherwise injure the recipient...

When is the FTSA Violated?

Florida Statute 501.059(8)

▶ Violations occur when:

- ▶ Making unsolicited telephonic sales calls while failing to identify your true first and last name **OR** business name on whose behalf you are calling
- ▶ Making unsolicited sales calls to those on the DNC lists
- ▶ Continue to make telephonic sales calls after the called party has revoked consent (ex. texting you to “STOP” calling)
- ▶ **Text messages** - if fail to stop sending text message solicitations with 15 days after receipt of such notice by the consumer to “STOP”

FTSA - Violations & Damages

- ▶ Actions brought by individuals or class actions
- ▶ Actual damages or \$500, whichever is greater PER VIOLATION
- ▶ Willfully and knowingly - 3x - \$1500 PER VIOLATION
- ▶ Attorney fees and costs

- ▶ 2023 changes made it tougher for litigants to bring suits, but lawsuits are still being filed

Do Not Call Registries

Federal and Florida

Do Not Call Registry (DNC) Federal

- ▶ National Do Not Call Regulations prohibit telemarketing calls to residential telephone (cell phones included) who have registered their phone number on the DNC Registry, unless
 - ▶ there is an established business relationship or
 - ▶ signed agreement which states the consumer agrees to be contacted by the caller.
- ▶ <https://www.donotcall.gov/>

Do Not Call Registry (DNC) Federal Continued

▶ Do Not Call list

- ▶ Same rule
- ▶ Enforcement likely to get tighter
- ▶ Fines are \$500-\$1500 per call if you violate

▶ Do Not Call Compliance:

- ▶ Do not call registrations must be honored indefinitely
- ▶ OR until the registration is cancelled by the consumer
- ▶ OR the phone number is removed by the database administrator

Do Not Call Registries (DNC) Florida

- ▶ Florida has a state counterpart to the Federal DNC
 - ▶ F.S. 501.059(4) states, “No telephone solicitor shall make or cause to be made any unsolicited telephonic sales call to any residential, mobile, or telephonic paging device if the number for that telephone appears in the then-current quarterly listing published by the department.”
 - ▶ If further states, “This subsection does NOT apply to any person licensed pursuant to chapter 475 who calls an actual or prospective seller or lessor of real property when such call is made in response to a yard sign or other form of advertisement placed by the seller or lessor.”
- ▶ Do not call before 8:00 a.m. and after 8:00 p.m. in the called person’s time zone
- ▶ <https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call>

Reassigned Numbers Database (RND)

- ▶ As of November 1st, 2021 - The FCC's Reassigned Numbers Database (RND) is designed to prevent a consumer from getting unwanted calls intended for someone who previously held their phone number
- ▶ Callers can use the database to determine whether a telephone number may have been reassigned so they can avoid calling consumers who do not want to receive the calls
- ▶ www.reassigned.us
- ▶ **How Can the Reassigned Numbers Database Help?**
 - ▶ Callers can check before making a call to find out if the phone number may have been reassigned. If the database wrongly indicates that the number has not been reassigned, the caller may be protected against TCPA liability when placing the call

Reassigned Numbers Database

- ▶ Earlier this month a court approved a settlement related to Blue Cross making illegal robocalls to wrong numbers
- ▶ Use the Reassigned Numbers Database to avoid this!

DO NOT COPY

Legal Updates & What to Watch

Stay Tuned

TCPA - Rules Rolling out on APRIL 11, 2025

- ▶ Effective April 11, 2025
 - ▶ New consent revocation rule allows consumers to revoke prior consent through any reasonable method
 - ▶ Marketers may not designate an exclusive means for revocation
 - ▶ Businesses are required to honor Do Not Call and consent revocation requests within 10 business days
 - ▶ This is slightly different from Florida's mini-TCPA
- ▶ Just because the new one-to-one consent language was not implemented doesn't mean this won't be

FTSA - 2025 Telephone Solicitation Bills

H.B. 375 & S.B. 454

- ▶ Two sister bills have been filed on February 4, 2025 and both have been referred to respective committees for review
- ▶ The bills are mainly seeking to:
 - ▶ Add to the definition of “Telephone Solicitor” to exempt tax-exempt non-profit organizations
 - ▶ Add to the definition of “Telephonic sales call” to exempt calls, texts, or voicemail transmissions made by tax-exempt non-profit organizations for religious, charitable, political or educational purposes

Best Practices

Staying compliant

Reasons to Avoid Litigation

- ▶ Litigation is costly - attorneys, court costs, etc.
 - ▶ Not to mention resources spent on litigation take away from resources that could be utilized for running your business
- ▶ It is time consuming - cases can take years to resolve
- ▶ Can hurt your brand - reputation
- ▶ Litigation is stressful
- ▶ No guarantees as to outcome

Best Practices

- ▶ Provide a clear explanation of the type of communication consumers are consenting to
- ▶ Obtain prior express written consent from the consumer you are calling
- ▶ Establish thorough consent tracking systems to ensure accurate documentation of consumer consent for marketing communications
- ▶ Implement real-time consent management to address opt-out requests efficiently and avoid any delays in communication cessation
- ▶ Establish and implement a TCPA/FTSA compliance policy & enforce it!
 - ▶ When in doubt - consult legal counsel to help create policies. A little legal help now can avoid expensive litigation costs later.

Best Practices Continued

- ▶ Provide easy opt-out options
- ▶ Scrub against the National DNC & Florida DNC & RND
- ▶ Scrub against your internal office DNC list
- ▶ Immediately honor “STOP” or Do Not Call requests
 - ▶ Conservative recommendation - implement 10 calendar day policy and you will be within both TCPA’s 10 business day and FTSA’s 15 calendar day required timelines



Thank you!

Got Questions?
Florida Realtors Legal Hotline
407-438-1409