



Don't Be Sued for Do Not Call /Auto-Dialing Violations

CALIFORNIA ASSOCIATION OF REALTORS®

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Brokers should be aware that lawsuits continue to be brought against firms, including real estate firms, for alleged Do-Not-Call/auto-dialing violations.

So what are the Do-Not-Call rules? In a nutshell, the federal Telephone Consumer Protection Act of 1991 ("TCPA") generally prohibits telephone solicitations to people who have registered their residential or cell phone numbers on a national do-not-call registry or list.

A "telephone solicitation" is placing a telephone call or message to encourage the purchase, rental, or investment in property, goods, or services. For detailed information on the do-not-call rules, see the CAR Q&A Article **Do-Not-Call, Do-Not-Fax, Do-Not-Email Laws**.

And how are auto-dialers problematic for Brokerages? Under the TCPA, a brokerage using an auto-dialing system can easily violate the law even where the calls are ultimately handled by a live agent.

The TCPA broadly prohibits:

- Prerecorded voice messages to landlines.
- Prerecorded voice messages to mobile phones without consent.
- Auto-dialed calls, and text messages to mobile phones without consent.

It is the auto-dialed calls to mobile phones without consent where real estate brokerages may be especially vulnerable.

The damages can be substantial: \$500 for each call placed negligently and \$1500 for each call placed willfully. This may not seem too onerous by itself, but the total claims can rise quickly since damages are per call and uncapped, and importantly, can be further increased if the claim is part of a class action lawsuit.

From a legal perspective, the real trouble with the TCPA is that it defines an auto-dialing system in a fairly broad manner and includes the use of any software-based dialer that has the capacity to store or produce numbers using random or sequential number generation.

What can brokers do to protect themselves?

1. Humans, as opposed to machines, should place calls. However, if a person does not actually dial a number, at the very least, a person must “intervene” to place a call such as through the click of a button.
2. Work with vendors to determine whether your technology triggers the TCPA and what can be done to avoid your tech from being considered an auto-dialer.
3. Get consent. Prior consent is required for auto-dialed calls to cell phones.
4. Make sure your system recognizes any and all attempts to revoke previously given consent.
5. Scrub your call lists. The TCPA’s consent requirements do not apply to autodialed calls to landlines. But landline numbers can be routed to mobile phones and some consumers provide cell numbers as home numbers.

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