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# TCPA Field Guide: Most Common TCPA Mistakes and How to Avoid Them

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- **2025 TCPA Litigation Trends**
- **5 Most Common TCPA Mistakes & How to Avoid Them**
- **Q&A**

# 2025 TCPA Litigation Trends

## Turn up the volume...



YTD, TCPA filings have **increased 57% YOY** vs. 2024

**2,364 TCPA complaints** through Oct 2025  
(vs. 1,510 filings same period 2024)

**73%** of TCPA filings in Oct 2025 were **class actions**

**1,280 unique plaintiffs** filed consumer suits in  
Oct 2025, with **39%** coming from **repeat litigants**  
(at least one prior consumer filing)

Data through Oct. 31, 2025

Source: <https://webrecon.com/webrecon-oct-2025-stats-tcpa-cfpb-complaints-down-fdcpa-fcra-complaints-up-for-month/>

- Reassigned number and wrong-number
- B2B calls without consent
- Additional calls after do-not-call request
- Artificial/prerecorded voice calls
- After-hours claims

**EAT  
SLEEP  
TCPA  
REPEAT**

# 2025 TCPA Litigation Trends – Creative Theories from Professional Plaintiffs

“Wrong”  
number claims

Opt-out  
evasion



Reclassifying  
informational or  
transactional calls and  
texts as  
“telemarketing”

# TCPA Field Guide

# Mistake No. 1

## Contacting a Problematic TCPA Plaintiff

# Repeat TCPA Litigants

## ■ How to Identify:

- Nationwide TCPA litigation search
- Inquire with TCPA counsel
- Industry/partner intel

## ■ How to Reduce Risk:

- Litigator scrubs
- Watch out for common techniques (e.g., fake leads, incomplete or unusual lead information, baiting, opt-out evasion, intentional acquisition of reassigned numbers, sharing of phone numbers)

## ■ What to Do if You Encounter One:

- Engage TCPA counsel
- Locate prior TCPA cases & review dockets:
  - Patterns
  - Allegations in pleadings that contradict current allegations
  - Declarations or other admissions
- Assess pro se vs. counsel representation



- How to Identify:
  - Call or text recipient doesn't match lead/applicant/account holder
  - Recipient states they did not submit a lead/application or denies providing their phone number
- Areas of Concern:
  - No consent
  - DNC registration/residential subscriber
  - Arguments that convert informational calls/texts to marketing
  - Manufactured “wrong party”
- How to Reduce Risk:
  - Reassigned number scrubs
  - Beware of stale contacts; implement procedures to avoid (e.g., sunseting, contact updates)
  - Do not rely on consent provided by another (or use extreme caution)
  - Litigator scrubs (see Repeat TCPA Litigant)
- What to Do If This Happens to You:
  - Add phone number to company DNC
  - Consider seeking updated information/new consent via non-TCPA-regulated methods
  - If a demand/claim arises, assess claimant, preserve records, engage TCPA counsel, check for indemnity



- How to Identify:

- Non-conforming revocation/DNC request
- Avoidance of proscribed DNC revocation/channels

- Areas of Concern:

- Terminates consent and EBR
- Scope of revocation
- New revocation regulations (including upcoming Revoke All rule)
- Potential for treble damages

- How to Reduce Risk:

- Implement DNC policy
- Broadly recognize revocations/DNCs (not just proscribed opt-outs)
- Training
- Recordkeeping
- Consider confirmatory opt-outs



- How to Identify:

- Individual did not consent or provide their phone number
- Consent obtained was inadequate

- Areas of Concern:

- Improper type/scope for outreach
- Inadequate disclosure (PEWC)
- Missing/lackluster consent records
- “Sharing” consent with 3Ps
- Lead generation



- How to Reduce Risk:

- Strong consent language & presentation
- Understand calls/texts for which you need consent & ensure adequate scope
- Good recordkeeping practices
- Address consent and recordkeeping in vendor/3P contracts

# “Residential” Subscribers

- How to Identify:
  - Personal/residential use of the phone number
  - Only personal phone (some courts)
- Areas of Concern:
  - Telemarketing/telephone solicitations
- Watch out for:
  - Mixed use numbers
  - Cell phones/VoIP
  - Publicly-listed business numbers
- How to Reduce Likelihood of Claims:
  - National DNC Registry scrubs unless applicable exemption
  - State law compliance
  - Litigator scrubs
  - Consented calls
- Other Notes:
  - B2B calls are not exempt from automated calling requirements



# Mistake No. 2

## Engaging in High-Risk Calling Activities Without Taking Proper Precautions

- How to Identify:

- Advertises commercial availability or quality of any property, goods, or services
- Content or purpose encourages purchase or rental of, or investment in, property, goods, or services

- Examples of High Risk Activities:

- Cold calling/texting
- Use of third-parties

- Other Areas of Concern

- ATDS usage
- State laws
- Vendor involvement
- Fraudulent leads



- How to Reduce Risk:

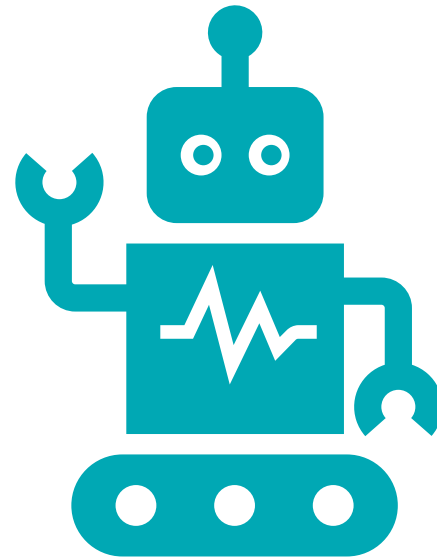
- Properly assess nature of calls/texts
- Obtain adequate consent
- Consult TCPA counsel in planning stages
- Implement internal DNC policy and protocols
- Scrub National DNC Registry and state DNC registries

- What to Do if Demand or Claim Arises:

- DNC the phone number
- Preserve records
- Watch for repeat litigants & attorneys
- Engage knowledgeable TCPA counsel
- Check for indemnity

# Prerecorded Messages/Artificial Voice Calls

- How to Identify:
  - Prerecorded messages
  - Artificial voices (including AI)
  - Soundboard technology
  - RVMs
- Areas of Concern:
  - Consent
  - Telemarketing
  - Exemptions + call count/opt-out restrictions
  - Disclosures
  - State laws



- How to Reduce Risk:
  - Properly identify and classify calls
  - Obtain adequate consent for call type
  - If telephone solicitation and no exemption(i.e., EBR, PEIP), National DNC Registry scrubs
  - Internal DNC procedures + written policy if telemarketing
  - State law compliance

- How to Identify:

- TCPA—“telephone solicitation” outside 8A - 9P
- State laws—varying

- Areas of Concern:

- Transient nature of cell phones
- Multiple time zones in some states
- Varying state restrictions
- Potential exemptions
- Transactional use cases/confirmatory messages



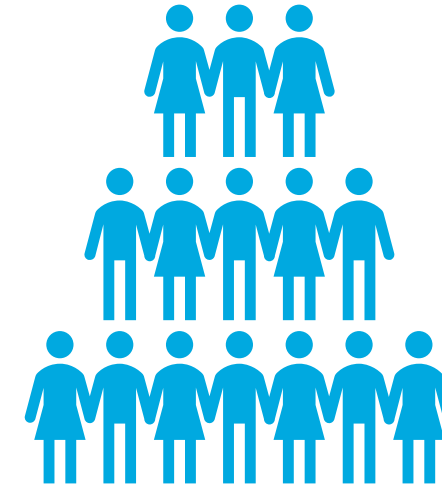
- How to Reduce Risk:

- Utilize available data to determine location; area code is one data point
- Do not call during “quiet” hours or limit such calls to informational/transactional use cases only\*
- If calling after hours, ensure applicable exemption (EBR, PEIP)\*
- Implement state law compliance strategy for addressing differing call times and restrictions
- Consider collecting consent specific to after-hours calls/texts

# Mistake No. 3

## Failing to Appreciate High Exposure Cases

- How to Identify:
  - Threatened in a demand
  - Pleading with class allegations
- How to Reduce Likelihood of Class Exposure:
  - Obtain agreement with arbitration provision and class action waiver\*
  - Consider ways in which recordkeeping & telephonic outreach might lend itself to class treatment; weigh options to thwart this & implement roadblocks if possible
  - Fight at every turn!



- What to do if presented as a demand:
  - ◆ Weigh possibility of class action in considering value of settlement
  - ◆ Evaluate counsel involved
  - ◆ Weigh likelihood of filing

- What to do if brought as a litigation:
  - Hire knowledgeable TCPA class counsel
  - Assess risk early and strategically
  - Determine if class waiver applies
  - Use FRE 408 to your advantage
  - Hire an expert (or experts)
  - Challenge at each step. Consider:
    - ◆ Motion to Strike on Pleadings
    - ◆ Motion to Stay/Bifurcate Discovery
    - ◆ Motion to Defeat/Strike Class Certification
    - ◆ Opposition to Class Certification
- Undermine FRCP 23 elements (not exclusive):
  - ◆ Individualized issues undermine commonality and predominance
  - ◆ Check numerosity
  - ◆ Background check plaintiff to ascertain potential inadequacy
  - ◆ Evaluate ascertainability challenges (differs across jurisdictions)
  - ◆ Challenge representative plaintiff's standing

# Mistake No. 4

## Thinking the TCPA is All That Matters

- How to Identify:
  - Nearly all 50 states regulate calling in some form
  - Is the activity regulated? How?
- Areas of Concern:
  - Differing requirements and exemptions between states and vs. TCPA (some competing)
  - Frequent amendments and new laws (e.g., Texas)
- How to Address:
  - State law compliance strategy



- Regulated Activities:
  - Telemarketing/telephone solicitation
  - Prerecords/ADAD
  - State DNC lists
  - Disclosure requirements
  - Calling time/time of day
  - Private right of action
  - Damages, Fees & Costs
  - Registration

- How to Identify:

- Call recording
- Tracking website activity
- Chatbots
- AI
- Debt collection
- Advertising
- Automatic renewal
- Data usage and sharing



- Areas of Concern:

- Federal and state wiretapping laws
- Federal and state debt collection laws
- Chatbot disclosure laws
- State AI regulations
- Other privacy laws

- How to Address:

- Make required disclosures & obtain req'd consents
- Use caution before turning over evidence to exculpate you from a TCPA case
- Don't neglect compliance with other state and federal laws

# Mistake No. 5

## Failing to Properly Address TCPA and State Laws When Doing Business With Others

- How to Identify:
  - Lead generators/aggregators
  - Affiliates
  - BPOs
  - Vendors/service providers
  - Partners
- Forms of TCPA Risk:
  - Direct liability
  - Vicarious liability
  - Indemnification and defense
  - “Fourth”-party involvement
- Areas of Concern (not exclusive):
  - Consent collection + recordkeeping
  - Telephonic outreach
  - Scrubbing activities
  - Allocating responsibility for TCPA compliance
  - Indemnity
- How to Reduce Risk:
  - Due diligence
  - Strong contracts
  - Vendor maintenance
- For more on third-party contracts:







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