

## Handling Phone Solicitors

I may start another long thread here and if that happens, so be it. As a threshold matter I do not like solicitors. Not one bit. My staff is instructed to handle the calls, but some do get through to me. I simply say thank you, I'm not interested. If the caller is persistent, I repeat myself and quietly hang up.

I don't yell at them, get cranky, slam the phone down, or blow whistles in their ears. They have a job and are simply trying to do it. No one wakes up with a burning desire to have a career in telephone sales. It is hard to imagine that if someone had good options that the person would stay in phone sales. Perhaps the treatment some of them receive from our colleagues, in some small way, contributes to the harsh and critical perception of those in our profession.

My \$.02. YMMV.

Deborah G. Matthews, Virginia

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When I have time, I try to keep them on the phone as long as possible, but never give them any personal info, or buy what they are selling. I am on a do not call list, and have no sympathy for the callers or their employers.

Michael A. Blake, Connecticut

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However, these days there are very few live solicitors. Nearly every solicitation call is a recorded message:

"Hi, this is Carmen from credit card services...."

"Every day the FBI reports there are [x number] of home break-ins every day."

"Hi, you have been selected to receive absolutely free...."

Each requires you to hit a button to speak with someone live (and thereby, presumably, prove your active interest.) The live calls only come from political pollsters, campaign solicitors, and charities - all of which is legal and which are not bound by do-not-call list rules.

I can't recall when I last received a live commercial solicitation call.

Avram L. Sacks, Illinois

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This. When I was waiting for my bar results, I'd call them back after they hung up on me.

Dan Gerber, Illinois

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I do not mind the fact that people cold call. I do backstop them with my assistant and part of instruction is to request a "do not call" status (besides registration).

A standard instruction here is that I will tell my assistant if I am anticipating a call from someone for my personal or business needs. All the others I don't want to hear about even the fact that a call exists. It is the same with the door-to-door people that ignore the no soliciting sign on occasion, but those can be obnoxious to get rid of so I help sometimes.

My procedure originated because of time burnt, especially on representatives for Thomson/West or Lexis or similar providers. The marketing and search engine optimizers and varied lead services are common callers also. Especially despicable are those who call pretending to be a prospective client as a pretense.

I cannot get any work done if I talk to phone solicitors, so I protect my time.

Darrell G. Stewart, Texas

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Yay! Something in my practice area!

Many of these calls aren't just annoying, they're illegal (up to \$1500 per call). Prerecorded telemarketing calls to landlines = illegal. Prerecorded or autodialed calls to cell phones are illegal without consent. What kind of consent depends on the type of call. The non-solicitation calls Avram mentioned (such as pollsters, solicitors, and charities) can still be illegal because express consent is needed. However, if you previously gave your phone number to the person calling, that is typically sufficient consent for these types of calls.

For solicitations, however, the express consent must be in writing and the possibility of robocalls conspicuously disclosed.

Similar rules apply to junk faxes (even to an efax service, I believe).

Unsolicited fax ad? Up to \$1500 per fax. Fax ad that lacks an opt out notice at the bottom of the first page? Same. So if any of you guys are

getting junk faxes and want to sue...I'm all ears! Short hand test for which faxes are typically worth bringing suit upon: needs at least two of (active website, phone number, email address).

Jeremy M. Glapion, New Jersey

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I thought pre-recorded calls to landlines were okay, so long as not on the do not call list and there is no commercial number do not call list.

Automated calls to a cell phone (including text messages) are illegal without express permission in advance.

Phil A. Taylor, Massachusetts

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Prerecorded telemarketing calls to landlines are illegal even if the number is not on the "Do Not Call" list. 47 CFR 64.1200(a)(3).

Being on the do not call list extends that protection to \*any\* solicitation, regardless of whether or not the call is automated or prerecorded.

Jeremy M. Glapion

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Does my phone line through Comcast count s landlines?

John Davidson, Pennsylvania

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Absolutely not. You're using VoIP

Miriam Jacobson, Pennsylvania

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The law is a bit unsettled on what constitutes a "residential telephone." But if you're charged for incoming calls (either \$/minute or in usage of your minutes) you may be able to make a claim out under the prohibition on automated/prerecorded calls to "any service for which the party is charged for the call." There is some law supporting that, saying that it doesn't matter that it may \*also \*constitute a residential phone, because the prohibition on calls to "services for which the party is charged for the call" is separate. Treated same way as cell phones.

Jeremy M. Glapion

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So does the do not call prohibit calls only to land lines and cell phones, and not apply to VoIP? And do you handle cases against these calls?

Miriam Jacobson

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The law in general (setting aside the DNC list) may apply to VoIP lines, but it basically depends on your VoIP plan. Is it a monthly fee with unlimited calling? The law probably does not apply (since the called party is not charged for the call). But if it's limited minutes or \$/hour and the call depletes minutes or causes fees, yes, it applies.

As for the "Do Not Call" list prohibitions specifically, if your VoIP number is on the list and you're still receiving telephone solicitations, it's a violation, but remember, for DNC violation, you need at least two calls within a 12-month period.

I do take such cases. I usually look for 20+ calls to bring an individual case; lower than that depends on the facts (e.g. DNC violations and robocall violations stack), and whether it would be a viable class. Also of course depends on the defendant (if they can't be tracked down, not typically worth a suit).

Shorthand:

Receiving prerecorded or autodialed calls or texts to your cell phone? Are they telemarketing? If yes ... Did you give express written consent? If not, they're likely illegal. If non-telemarketing...Did you give express consent? If not, they're likely illegal.

Receiving prerecorded calls on your residential line? Are they telemarketing? If yes ... did you give express written consent? If not, they're likely illegal.

On your VoIP line? Do incoming calls deplete your minutes or cause additional charges? If so, treat like cell phone. If not, treat like residential line.

Any of the above numbers on the do not call list? Two or more calls in a 12-month period? If yes to both, likely illegal.

Receiving unsolicited faxes? Are they advertising something? If yes, illegal. Do they have a detailed opt out notice on the first page? If not, also illegal.

Jeremy M. Glapion

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