# TCPA Litigation Updates

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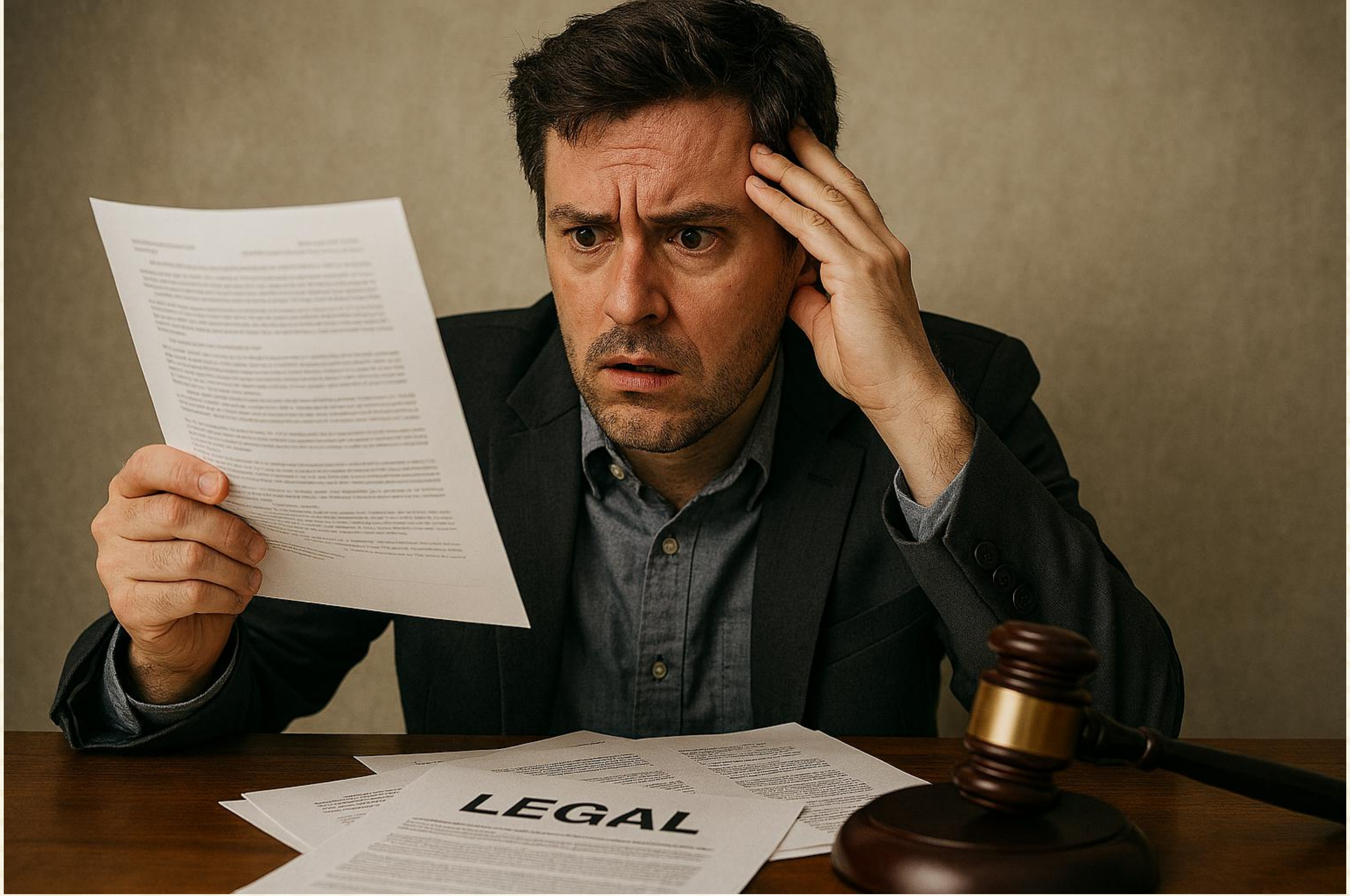
# TCPA Litigation – State of Play

In sum:

In the grand tradition of the TCPA, rampant confusion over how the statute and regulations work continues to drive litigation.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# ECONOMY & BUSINESS

TECH FRIEND

## Proposed law could end those spammy mortgage calls

BY SHIRA OVIDE

Within hours of applying for a home loan, some people are inundated with calls and texts with competing mortgage pitches. Callers aren't always up front about who they are and what they're offering.

Such blitzes are kicked off by a sale of your mortgage information. The marketing come-ons are legal in principle, but mortgage industry participants say they're intrusive and skirt the law.

Now, backlash is about to result in a rarity in Washington: a federal law aimed at protecting your privacy.

There's unusual agreement among lawmakers on the political left and right, consumer watchdogs, and some business-interest groups that Americans need stricter government regulation over this use of your data.

It's not clear that this proposed law will work in taming unwanted mortgage offers. That makes it a test of whether policy changes can give Americans real power over their personal information.

I'll tell you about this oddball privacy bill, how to cut back on unwanted mortgage pitches and why they're a symptom of an economy built on your data.

WASHINGTON POST ILLUSTRATION; ISTOCK

### How these mortgage blitzes happen

When you apply to take out or refinance a home loan, the lender checks your credit with a company such as Experian or Equifax.

The credit reporting company might then sell the information that you're hunting for a loan to mortgage lenders or businesses that trade in personal data.

These mortgage "trigger leads" are juicy red meat. Businesses race to persuade you to borrow from them.

The credit reporting industry says it's providing data for potentially helpful prescreened credit offers, similar to preapproval mailings for credit cards. You could save tons of money if you land a lower home loan rate.

But for decades, people have complained about their mortgage status being sold without their knowledge or permission. Particularly when home loans dry up, as they have in the past few years, desperate mortgage pitchmen may falsely claim they're from your bank or never follow through on a loan offer.

Congress is trying to do something about it. A bill that would largely ban the credit reporting companies from selling your mortgage information, the Homebuyers Privacy Protection Act, easily passed the House and Senate this summer.

The bill's supporters and its opponents expect President Donald Trump to sign it into law after Congress resumes its normal schedule in September. (The White House didn't comment.)

The bill was the result of unusual coalitions and compromises. For years, some consumer groups and Democrats in Congress had wanted the mortgage trigger leads banned. More recently, conservative lawmakers and trade groups representing banks and mortgage businesses opposed bans but lobbied for more regulation.

The proposed law wouldn't entirely shut down unsolicited mortgage pitches. Your existing home lender, for example, could still buy information that you're looking at refinancing from another bank and pitch you to stick with it.

The Consumer Data Industry Association, which represents companies including Equifax, Experian and TransUnion, said that the proposed law won't stop malicious loan pitches but instead would insulate big mortgage companies from losing your business to a competitor.

### What you can do about spammy mortgage pitches

If the bill becomes law, it would go into effect after six months. For now, you can:

- **Opt out of credit offers.** You can sign up at *OptOutPrescreen.com*, which is operated by the credit reporting companies, to exclude yourself from all types of prescreened credit offers.

Register your number at *donotcall.gov*, which limits unsolicited marketing calls, including for mortgages.

These steps won't entirely stop unwanted mortgage offers, experts said, partly because unscrupulous marketers ignore those opt-outs.

- **Do your own home loan research.** Sharon Cornelissen, director of housing for the Consumer Federation of America (CFA), advised looking into mortgage lenders on your own and not settling for the brokers who call because they've bought information about your loan application.

CFA, a national organization of nonprofit consumer groups, also recommends attending homeownership workshops from nonprofits that help with mortgages and other issues. And in Cornelissen's ideal world, the government would fund educational counseling for prospective home owners.

### Is this a blueprint for privacy protections?

It's not clear whether national laws are the answer for Americans who feel as if they have little control over their data privacy. We haven't really tried that approach, though.

Brightlines CEO Shauna Dillavou, whose company helps people remove unwanted online personal information, worries that the proposed mortgage privacy law is vague and too narrow. (She wasn't involved in the bill.)

Even some bill supporters say that government watchdogs haven't cracked down on clear abuses of mortgage information and that it wouldn't be easy to enforce.

But Dillavou also said the legislation spotlights the nuisances, or worse, from the widespread collection and sale of Americans' data.

"Across industries, we're seeing companies contort their own business models — in this case, spamming thousands of folks with insincere offers for mortgages — simply to harvest their sensitive data and sell it," Dillavou said.

The Washington Post

8/25/2025

# Federal Legislative Update

- Public Law 119-36 signed by President Trump on Sept. 5, 2025.
  - “Homebuyers Privacy Protection Act”
  - Amends the Fair Credit Reporting Act
  - Credit reporting agencies may not furnish “trigger lead” reports unless consumer opts-in (or in other, limited circumstances).

# Legislative Relief in Florida

On May 16, 2025, Gov. Ron DeSantis signed SB 232, which amended Florida statutes to clarify that debt collection “communications” do not include emails.

- Critical update because plaintiff-side attorneys were filing suits and making demands for routine emails sent in off-hours.

# TCPA Litigation Volume Snapshot

| | Current Month: | Previous Month: | | Previous Year: | | Year to Date: | Year to Date Comp: | |
|---|---|---|---|---|---|---|---|---|
| | *Jul 01, 2025*<br>*Jul 31, 2025* | *Jun 01, 2025*<br>*Jun 30, 2025* | | *Jul 01, 2024*<br>*Jul 31, 2024* | | *Jan 01, 2025*<br>*Jul 31, 2025* | *Jan 01, 2024*<br>*Jul 31, 2024* | |
| **CFPB** | 26963 | 24334 | 10.8% | 12430 | 116.9% | 160937 | 78912 | 103.9% |
| **FDCPA** | 362 | 345 | 4.9% | 368 | -1.6% | 2468 | 2606 | -5.3% |
| **FCRA** | 788 | 663 | 18.9% | 454 | 73.6% | 4542 | 3694 | 23.0% |
| **TCPA** | 273 | 257 | 6.2% | 129 | 111.6% | 1609 | 1054 | 52.7% |

Source: WebRecon

# The New Rubric: No Deference to FCC

- Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024).
- McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp., 606 U.S. 146 (2025).

# Key Recent Cases

- Text messages are not phone "calls" under the TCPA.  Two cases <u>granting</u> motions to dismiss:

  - Davis v. CVS Pharmacy, Inc., No. 4:24-cv-477, 2025 WL 2491195, at *4 (N.D. Fla. Aug. 26, 2025).

  - Jones v. Blackstone Med. Servs., LLC, No. 1:24-cv-01074, 2025 WL 2042764, at *5 (C.D. Ill. July 21, 2025) (citing *Loper Bright*).

# Key Recent Cases

- Honoring do-not-call (text) request nine days after request is reasonable. Dismissal of claims based on three text messages sent within nine days of stop request.

  - Hulett v. Eyebuydirect, Inc., No. 1:24-cv-996, 2025 WL 1677071, at *8 (N.D.N.Y. June 13, 2025).

# Key Recent Cases

- Companies may be directly liable for marketing text messages sent by third party marketing affiliates.

  - Reisman v. Gen Digital Inc., No. 25-cv-1653, 2025 WL 2419960, at *3 (D. Ariz. Aug. 21, 2025) (denying motion to dismiss).

  - See also Isaacs v. USHealth Advisors, LLC, No. 3:24-cv-216, 2025 WL 2268359, at *5 (N.D. Ga. Aug. 7, 2025) (denying MTD on vicarious liability grounds).

# Questions?

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