

# OUR PRACTICE

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## TCPA

**The Telephone Consumer Protection Act (TCPA) restricts the making of telemarketing calls and the use of automatic telephone dialing systems and artificial or prerecorded voice messages. Recipients of prohibited telephone calls, text messages, and faxes may sue for damages of between \$500 and \$1,500 per communication. Baker Donelson's TCPA team has extensive experience both litigating TCPA claims and advising clients on how to avoid litigation under this statute.**

We have handled matters for clients of all sizes, including companies in the financial services industry, health care, marketing companies, restaurants, and even law firms. Our team helps businesses understand and comply with the TCPA to avoid litigation, and helps defend against individual and class actions in the event of a lawsuit.

### Corporate Services and Compliance

Our goal is to help businesses take action *before* a company is named in a TCPA suit. We analyze existing business operations marketing, customer communications, and collaborate with company personnel to create or modify existing procedures to mitigate future litigation risk and cost. We understand that different industries need different approaches to towards marketing and customer communications. We also advise clients on how to identify and maintain crucial evidence in support of TCPA defenses. We can also train company employees and in-house counsel on compliance issues relating to telemarketing, consumer-directed telephone calls, text messages to mobile devices, and faxes regulated by the TCPA.

### Litigation

Our attorneys have defended TCPA class actions and individual cases in arbitration proceedings and state, federal, and bankruptcy courts across the country. We have litigated against a number of the most prominent plaintiffs' attorneys on both a regional and nationwide basis. Our team has successfully defended TCPA claims through all phases of litigation, including trial. We are leaders in the field and have utilized both established and unconventional defenses to defend our clients. We have successfully maintained and/or recouped fines from responsible third parties in the event of an adverse judgment against our client(s). Our representation includes both defense of litigation as well as detecting weaknesses in client procedures in order for our clients to avoid future litigation.



### Case Studies

- [Successful Result for Client in TCPA Class Action](#) - Telephone Consumer Protection Act Class Action



### Representative Matters

- Won full defense verdict following trial for a nationwide mortgage servicer and lender in a heavily contested TCPA and FCCPA suit, where over 500 calls were at issue and pre-suit demand neared \$1 million.
- Led and won a TCPA trial on behalf of national mortgage servicer in 2017, in which plaintiff alleged to have been called by an auto dialer 2,000 times.
- Defending a national lawn care provider in a proposed class action in federal court alleging violations of the TCPA.

- Filed a motion for summary judgment arguing that the provider's telephony system did not constitute an automatic telephone dialing system under applicable regulations and case law. Also filed a motion for summary judgment arguing that the provider's policies and procedures foreclosed the plaintiff's ability to prevail on her internal do-not-call claims and established the elements of the statutory safe harbor requiring dismissal of her National Do-Not-Call Registry claims.
- Obtained a dismissal of a lawsuit brought by a borrower against a national financial services company due to the plaintiff's failure to follow pre-suit notice requirements in the relevant loan agreement.
- Successfully defended insurance franchisor client in federal TCPA class-action lawsuit, resulting in client being dropped from the suit.
- Obtained a bench verdict in favor of a regional bank against allegations of fraud, TCPA violations and emotional distress.
- Negotiated low-dollar amount settlements for national mortgage servicers, based on strategic limited discovery evidencing consumer's provision of consent to be contacted on numerous occasions without evidence of revocation.
- Consulted on the overhaul of a national bank's online marketing practices and the regulatory impact of their new policies, procedures and controls around their marketing department's data collection under Gramm-Leach-Bliley Act (GLBA), Fair Debt Collections Practices Act (FDCPA), TCPA, the Federal Financial Institutions Examination Council (FFIEC), and FTC guidance.
- Advised television network on TCPA-related terms and conditions in agreement governing text message promotional service for network's viewers.
- Advise lead generation companies with TCPA contract compliance and represent them in the resolution of disputes with TCPA plaintiffs.
- Advised text-messaging marketing platform on TCPA compliance issues, resulting in modification of service delivery model.
- Helped clinical research company establish compliance program in the wake of TCPA class action suit. Devised procedures and workflows to ensure consent on existing and future leads; developed processes to ensure an internal do-not call list was maintained; drafted TCPA policies and developed an annual audit work plan to ensure compliance.
- Drafted TCPA compliance policies for telemedicine provider, and analyzed potential applicability of the TCPA health care exceptions as part of its rollout of member engagement tools; also developed procedures for ensuring that the member contact lists it receives are scrubbed for Do-Not-Calls and consents.
- Negotiated a TCPA settlement of a class action suit on a vicarious liability theory on behalf of telemedicine provider; settled for \$1000.
- Advised technology vendor on the applicability of TCPA on its communications platform aimed at helping health care providers with patient outreach.