WHAT YOU CAN DO ABOUT THOSE ANNOYING ROBOCALLS

Florida attorneys' advice when robots, spoofers and scammers call

By Carole Hawkins on June 3, 2019
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Has "Lisa" ever phoned you with important information about your credit card account? Respond to her soothing robotic voice and you'll get a sales pitch.

After Congress created the National Do Not Call Registry in 2003, unwanted marketing calls all but disappeared. But they've crept back. In 2018, their frequency increased by roughly 57 percent to 47.8 billion total calls, according to robocall blocking software company YouMail. The Federal Trade Commission received 5.7 million complaints about robocalls in 2018.

Aren't they illegal? Can't you sue? Why are they so hard to get rid of?

"The biggest problem with robocalls is most really are scams. They're not even viable entities," says Brendan Sweeney, a consumer law attorney at Sweeney Law in Fort Lauderdale, adding he got three just that morning.

Under the 1991 Telephone Consumer Protection Act (TCPA), companies cannot make marketing calls without written consent of the consumer, unless they are to current customers. That law, and the Do-Not-Call Registry, curtailed traditional call-center marketing for years.

By the late 2000s though, new internet technology made it possible for legitimate companies and scammers alike to make thousands of phone calls cheaply. The Federal Trade Commission in 2009 responded by adopting rules that outlawed robocalls. Voice calls made using an auto-dialer are also illegal. If you hear a series of clicks before the caller speaks, it's likely an autodialed call.

But then another technology, "spoofing," came along. It allowed companies—often from overseas—to generate fake caller IDs, so their origins couldn't be tracked. The calls are certainly illegal. The problem is you can't identify a defendant to sue, said Sweeney.

When callers are identifiable, a lawyer can help. Under federal law, each marketing call made to your cell phone is worth $500 in statutory damages, plus prevailing-party attorney fees. The damages can go to $1,500 per call if the company willfully violated telemarketing law. It only takes one call to file a complaint. Unwanted marketing texts and junk faxes are also violations.

"A lot of attorneys are going after text messages right now, because you can show that they were sent by that entity," Sweeney said.

Consumers also have the right to not be constantly called by debt collectors, said Eddy Leal, a Miami-based consumer law attorney. Robocalling is used to make these phone calls in many cases. The call is not transferred to a live debt collector until the system detects a recipient has answered.

"If you say, 'I've retained an attorney. I want all communications to go to that attorney,' then it's a violation for them to for them to call," Leal said.

In any case, it can be a bad idea to obey a debt collection robocall, because debts are often sold several times on the secondary market. You could mistakenly end up paying a company that no longer owns the debt, Leal said.

Once you've identified a caller, it should be easy to prosecute an illegal call, shouldn't it? Not necessarily.

If you've given your written permission, then a company is legally allowed to call you, says consumer law attorney Chris Hahn with Maurice Wutscher in Fort Lauderdale. Consents are often buried in the fine print of signed contracts—for example, when you borrow money, authorize repairs to your car, or purchase a hotel room. Even affiliate companies may be authorized to call with special offers and promotions.

You can revoke that consent, but it might take several tries.

"You could walk into your bank and say to the teller, 'Hey, I want you to stop the phone calls offering to refinance my mortgage,'" Hahn said. "But that teller doesn't necessarily have access to all the systems that the bank's lending division does."

Attorneys certainly prosecute robocalls when there's a viable claim. When there's not, there are other methods.

Hahn uses an app—Mr. Number and Robokiller are two popular ones—to block calls from suspected scammers.

Sweeney had to change his phone number.

"Your information gets sold down the river, so to speak," he says. "It has touched many hands after awhile."

Soon, a technology solution may aid Florida consumers. The Florida Call-Blocking Act, which passed in 2018, empowers phone carriers to block calls made with spoofed numbers.

What Can You Do About Robocalls?

Under the Telephone Consumer Protection Act, Robocalls are illegal, but they can be tough to stop.

1. Check to make sure it's from a valid number; if so, call a lawyer.
2. Download an app that blocks spoof calls.
3. Use a scam-blocking service offered by your telephone carrier.
4. File a complaint with the FTC and the national Do-Not-Call Registry.
5. Change your phone number.