



Voicemail Messages for Consumers

Please Leave A Message...?



- ▶ While more and more consumers have access to voice messaging technology, either through traditional answering machines or through voicemail systems available through cellular phones, many consumers do not welcome voice messages from lenders or their service providers. Therefore, whether to avoid reputational risk or compliance risk, many organizations struggle with the decision to leave voice messages with consumers.

First Party Risks for Voicemails



- ▶ UDAAP:
 - ▶ Harassment
 - ▶ Misrepresentation
- ▶ Reputation:
 - ▶ Dissatisfied Consumers
 - ▶ Formal Complaints

Harassment

A high volume of calls to consumers can be considered a nuisance. Furthermore, the Dodd-Frank Act's prohibitions against Unfair, Deceptive, or Abusive Acts and Practices (UDAAP) may include call volume from creditors that rise to the level of harassment. (CFPB Examination manual, pg. 175)

An act may be considered UNFAIR under Dodd-Frank if:

- The act or practice is likely to cause substantial injury to consumers
- The injury cannot be reasonably avoided by the consumer
- The injury must not be outweighed by countervailing benefits to the consumer

Misrepresentation

Similarly, the Dodd-Frank Act's prohibitions against deceptive acts includes statements by creditors that are misleading or deceptive.

An act may be considered DECEPTIVE if the act or statement:

- Misleads or is likely to mislead the consumer
- The act or statement would mislead a reasonable consumer
- The act or statement must be material



Dissatisfied Consumers

Not all risks to creditors for leaving voicemails revolve around UDAAP risk. Dissatisfied consumers can lead to reputational harm to your organization. Patterns of dissatisfaction can harm business operations. Therefore, contacts with consumers, including voice messages, should be carefully controlled for reputational risk.



Formal Complaints

Dissatisfied consumers are more likely to file formal complaints such as complaints with the Better Business Bureau, the Consumer Financial Protection Bureau, or other consumer advocacy groups. These complaints can create risk of regulatory action, decreased trust from consumers, and decreased revenues.

Third Party Risks for Voicemails



- ▶ The FDCPA applies to third party collections.
 - ▶ Third Party Disclosure
 - ▶ Meaningful Disclosure
 - ▶ Mini-Miranda
 - ▶ Foti vs. Zortman
- ▶ UDAAP:
 - ▶ Harassment
 - ▶ Misrepresentation



Third Party Disclosure

Section 805 of the FDCPA prohibits communication of a debt to a party other than a consumer. Several courts across the country have ruled that a voice mail message constitutes a communication under the FDCPA. Therefore, any voice mail messages left by debt collectors must avoid disclosure of a debt.



Meaningful Disclosure

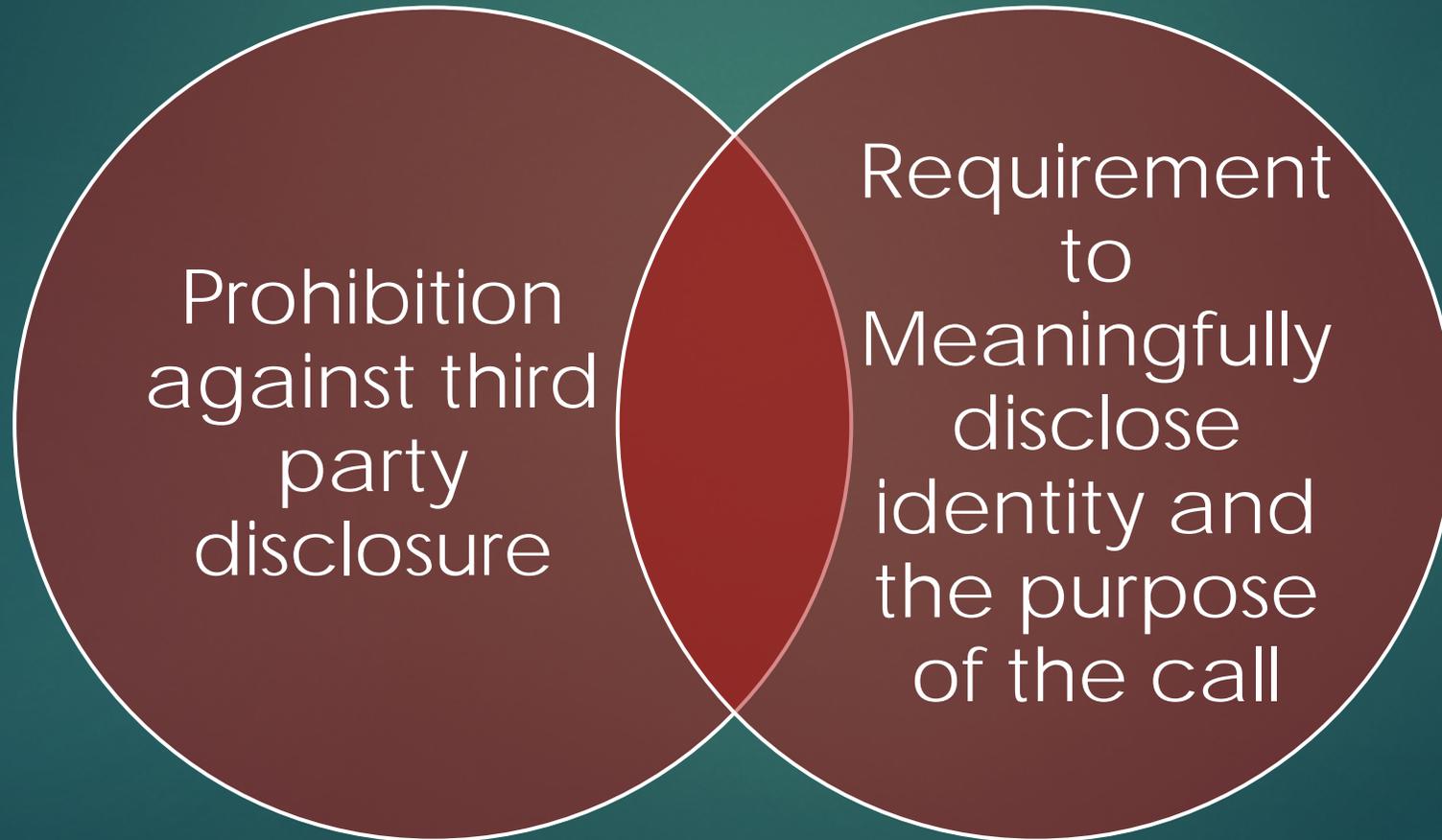
Unfortunately, under Section 806 of the FDCPA, calls that fail to meaningfully disclose the caller's identity are violations of the act. Courts have held meaningful disclosure to include at a minimum, the identity of the collector and the name of the business collecting the debt. In addition, some state laws require disclosure of the creditor to whom the debt is owed.

The Mini-Miranda

Communications with consumers about a debt, including voice messages must include the mini-Miranda, or the statement advising the consumer in the initial communication that the person calling is a debt collector and that any information obtained may be used for that purpose. Subsequent communications with a consumer after the initial communication can state simply that the call is from a debt collector.

This requirement is clear when a communication is targeted at a consumer, even if the statement raises risk of third party disclosure.

Conflict Between Privacy and Disclosure in Voicemails



Foti v. Zortman

Foti Message

- ▶ This is a message for [consumer's name]. If we have reached the wrong number for this person, please call us at [phone number #1] to remove your phone number from our list. If you are not [consumer's name] please hang up now. If you are [consumer's name] please continue to listen to this message.
PAUSE* [Consumer's name], you should not listen to this message so that other people can hear it as it contains personal and private information. *PAUSE
- ▶ *This is [collector's name] from [company's name]. This is an attempt to collect a debt by a debt collector. Any information obtained will be used for that purpose. Please contact me about an important business matter at [phone #2]."*

Zortman Message

- ▶ This is a call from [collector's name] with [collection agency's name]. [Collection agency's name] is a debt collector. Please call us back at [Phone number].

Best Practices for Voice Messages



- ▶ Avoid calling consumers excessively. Remember that even calls that do not have a message left will likely show up on caller-ID systems.
- ▶ No voicemail should be left without carefully monitored scripts and review by a qualified attorney. Statements in voicemail scripts should be thoroughly checked against policies, procedures, and practices for veracity.
- ▶ Avoid communications that require legal disclosures via voicemail.
- ▶ A significant sample of voicemails left with consumers should be recorded and audited by quality assurance staff or speech analytics software to ensure that scripts are followed consistently.

Questions & Comments?