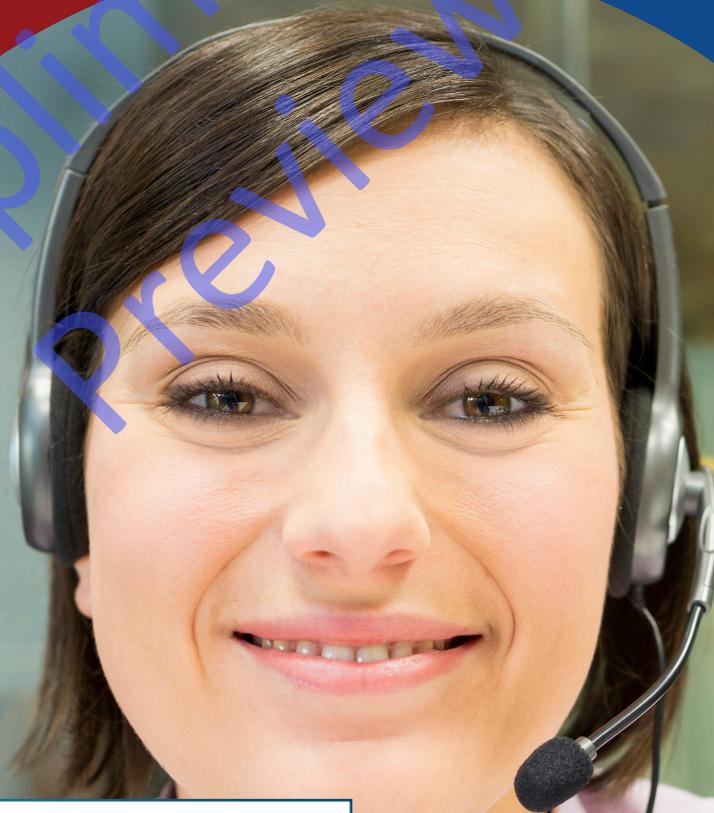


# CALL COMPLIANCE

*Revised for 2015*

Complimentary  
Preview



**COMPLIANCE**  
PROFESSIONALS FORUM  
an IA initiative

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## Legal Disclaimer

This information contained in this report is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to assure this information is up-to-date. It is not intended to be a full and exhaustive explanation of the law in any area, however, nor should it be used to replace the advice of your own legal counsel.

Complimentary  
Preview

## Contributors

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Katrina also represents clients in general commercial litigation matters, including inter-creditor disputes, title and lien priority disputes, breach of privacy and breach of contract actions.

**Don Maurice** is a partner at Maurice & Needleman, P.C. with offices in Pennsylvania and New Jersey. He regularly defends FDCPA, TCPA, FCRA and UDAAP in both individual and class actions. He served as amicus counsel in the recently decided Supreme Court FDCPA case Marx v. General Revenue. He currently serves as vice chair of the Debt Collection Practices and Bankruptcy Subcommittee of the American Bar Association's Consumer Financial Services Committee, Business Law Section. Don is admitted to the Bars of New York, New Jersey and the District of Columbia where he regularly practices. You can read Don's blog at [consumerfsblog.com](http://consumerfsblog.com) or follow him on Twitter @dsmaurice.

**Michael Thurman** of Loeb & Loeb LLP is a Los Angeles-based trial attorney who defends lawsuits, arbitrations and regulatory actions brought against businesses and their executives and employees. He regularly represents business clients in consumer protection class actions and government regulatory actions and investigations brought by the Federal Trade Commission (FTC) and state regulators, and counsels clients in various industries on advertising and marketing issues. Thurman is also the co-head of Loeb & Loeb LLP's Consumer Financial Protection Bureau Task Force.

## 2015 Revisions

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**John H. Bedard, Jr.** is the managing attorney of Bedard Law Group, P.C. located in Atlanta, Georgia. John represents creditors, asset buyers, and debt collectors helping them stay in compliance with state and federal law. He also manages the nationwide litigation for several collection agencies and focuses his litigation practice on FDCPA, TCPA, and FCRA defense. John's practice also focuses on defending regulatory actions including CFPB investigations and travels the country performing CFPB readiness assessments for the collection industry. He received his law degree from the Syracuse University College of Law and his undergraduate degree in Economics from the Pennsylvania State University. He can be reached at Bedard Law Group, P.C. 2810 Peachtree Industrial Blvd., Suite D, Duluth, Georgia 30097. Phone: 678-253-1871ext. 244. Fax: 678-253-1873. [jbedard@bedardlawgroup.com](mailto:jbedard@bedardlawgroup.com)

**Contents**

**Contributors** ..... 3

**2015 Revisions** ..... 3

**Call Me Maybe:**..... 5  
*What are some of the big dos and don'ts when calling consumers? What is the industry– particularly first-party collectors and lenders – doing to combat the challenges of contacting consumers on their cell phones?* ..... 5

**No Scrubs:**..... 12  
*How often should you scrub your cell phone list to ensure that the cell phone number is still registered to that consumer before auto-dialing?* ..... 12

**Port in a storm:**..... 15  
With the ease of porting phones there are many situations where the phone area code indicates a different time zone than the physical address..... 15

**Party in the CFPB:**..... 15  
*How does the CFPB register and recognize first-party collectors? Is this going to change?* ..... 15

**Notice Anything?**..... 18  
*What are some best practices and sample language for out-of-statute and bankruptcy notices?* ..... 18

**Appendix A: Relevant Court Cases** ..... 20

**Appendix B: Regulations**..... 21

## Call Me Maybe:

***What are some of the big dos and don'ts when calling consumers? What is the industry— particularly first-party collectors and lenders – doing to combat the challenges of contacting consumers on their cell phones?***

What if...

You Should...

<p>You advise the consumer that you are recording the call, but the consumer wants to record you, and you tell them you cannot authorize them to record you?</p>	<p>“If one of the two parties to the conversation does not give their consent, then no recording should be taking place.” Michael Thurman, Loeb &amp; Loeb LLP-Note, <i>although this is the most consumer friendly approach it is not necessarily the law. Most states are one-party consent states and only one of the individuals on the phone is required to agree to the recording.</i> <i>This is a topic that should be carefully reviewed with your agency counsel. This is also something that should be clearly noted in your Call Recording Policy. If your policy indicates you will stop recording if asked but the agent does not stop the recording it can be found to be a violation during an examination.</i></p>
<p>You call a consumer at his confirmed home number: Can you leave a message for a return call with a live third party at his house?</p>	<p>Leave a message, if you must, but keep it simple. Do not disclose that you're calling about a debt.** <b>**This answer caused a great deal of disagreement among the attorneys in the webinar:</b></p>

### From the Webinar...

**Michael Thurman:** The answer, without more, is yes. You can leave a message. It's a free country, this is America; you can call anyone you want and leave a message with them.

**Don Maurice:** I'm very much concerned with leaving messages with third parties. If we're talking about a message to collect a debt, and a debt defined by the FDCPA or within the context of the FDCPA, if it's not the consumer, then I'm very much against it.

**Katrina Christakis:** I agree with you, Don. I'm not really a big fan of leaving messages with live third parties either. At least if you're leaving a message on an answering machine, presumably that recording would later come back as evidence, and if you've left an otherwise compliant, non-harassing message, you can prove what was said, what wasn't said. But if you've left a message with a third party, proving what you said or didn't say can open the door to all sorts of problems.

**John Bedard 2015 update:** *"The answer is emphatically NO!. Collectors should not leave messages with any live party other than the consumer."* John adds that he believes that the "free country" argument cannot be supported as a defense under the FDCPA.

Please keep in mind that under the FDCPA you are not permitted to give your company name unless specifically asked to a 3<sup>rd</sup> Party. If you want to contact somebody other than the consumer, it can only be done under very specific circumstances, like acquiring location information\* for the consumer, or if you have prior consent of the consumer to contact that individual, or by court order. *Be careful!*

**Recommendation: Work with your legal counsel to develop a solid policy for leaving messages. Once that policy is in place, review and audit for adherence.**

**\* 804. Acquisition of location information [15 USC 1692b]**

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall --

- (1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
- (2) not state that such consumer owes any debt;
- (3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

