



MiamiRealtors.com



# **NEW WAVE OF CHATBOT LAWSUITS: PROTECT YOURSELF!**

[miamirealtors.com/legalupdates](https://miamirealtors.com/legalupdates)  
6.13.25

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La Asociación de REALTORS® de MIAMI se adhiere a una estricta política de cumplimiento con las leyes antimonopolio federales y estatales. Como tal, cualquier discusión o actividad con posibles implicaciones antimonopolio, las implicaciones, incluyendo pero no limitándose a la fijación de precios de comisiones, la asignación de mercados, la asignación de clientes, la manipulación de ofertas o los boicots, están estrictamente prohibidas. MIAMI REALTORS® apoya firmemente un mercado competitivo asegurándose que competidores tengan la libertad de participar en negocios sin restricciones artificiales a la competencia.



Scan Here to

# KNOW THE FACTS

MiamiRealtors/Facts



MiamiRealtors.com

# DISCLAIMER:

This session is only meant to provide education and information on relevant legal topics facing the industry and is not a substitute for legal advice or representation.



**BACKGROUND:**

WHAT IS HAPPENING &  
WHAT ARE THESE LAWSUITS

# WHAT IS A CHATBOT?

The screenshot shows a web browser window with the URL `miamirealtors.com`. The page content is a legal article titled "WHAT YOU NEED TO DO NOW!" with several bullet points. A chatbot interface is overlaid on the right side of the page. The chatbot header is "MIAMI Realtors®" with a timestamp of "8:52 AM". The chatbot messages are from "MIAMI Professional-Ai" and include a greeting, a consent statement, and links to the Privacy Policy and Terms of Use. The chatbot interface also includes a "Feedback" button and a "Type a message" input field. The article text is partially obscured by the chatbot overlay.

**WHAT YOU NEED TO DO NOW!**

- If you are using a chatbot on your website, add disclaimer
- Examples of disclaimers you can use on your chatbot in
  - *Welcome! Please fill out the form below to get connected with a live representative which uses an automated chatbot app and/or a live representative. The collection, recording, and use/disclosure of information is being handled by service providers acting on our behalf in accordance with our privacy policy.*
  - *By continuing with this chat, which uses an automated chatbot app and/or a live representative, you consent to and acknowledge the collection, recording, and use/disclosure of information about you and this chat session by MIAMI Association of REALTORS and service providers acting on MIAMI REALTORS' behalf in accordance with the Privacy Policy and Terms of Use.*
  - *Before we begin, you should know that any information you provide will be collected, recorded, and used in accordance with our privacy policy.*
- Feel free to edit the disclaimer to meet your business' unique needs.
- Make sure your privacy policy addresses what you do with the information collected.

**WHAT'S THE BASIS OF THESE LAWSUITS?**

- **What the plaintiff is claiming.** The plaintiff – who has filed a lawsuit – is claiming a failure to include a disclaimer prior to recording "live chat" sessions, which is an "illegal interception" and violations of the [Florida Security of Communications Stats.](#)
- **The one case plaintiff cites is outdated and does not accurately reflect the law.** Their attorneys use to support their position is [O'Brien v. O'Brien](#). However, this was a divorce case where the wife secretly recorded her husband's chat sessions so that she could catch him chatting with another woman.
- **Possible defenses to the new wave of lawsuits.** The [O'Brien](#) case is fundamentally different than the scenario described in this wave of lawsuits and there have been many new cases addressing the FSCA in the past 20 years since that case was decided. Below are some possible defenses; however, MIAMI

**MIAMI Realtors®**

8:52 AM

MIAMI Professional-Ai

Hi there. Got a question? I'm here to help.

By continuing with this chat, which uses an automated chatbot app and/or a live representative, you consent to and acknowledge the collection, recording, and use/disclosure of information about you and this chat session by MIAMI Association of REALTORS and service providers acting on MIAMI REALTORS' behalf in accordance with the Privacy Policy and Terms of Use.

Privacy Policy:  
<https://www.miamirealtors.com/about-miami/privacy-policy/>

Terms of Use:  
<https://www.miamirealtors.com/about-miami/disclaimer/>

8:52 AM

Type a message

Built with Zendesk

Inbox • evia

# WHAT IS HAPPENING?

- **70+ LAWSUITS HAVE BEEN FILED IN BROWARD COUNTY, FLORIDA!**

- 1 plaintiff has filed 70+ lawsuits in Broward County, Florida
- The lawsuits are exactly the same

- **WHAT ARE THE LAWSUITS ABOUT?**

- Plaintiff claims that the failure to include a disclaimer prior to recording “live chat” electronic communications on chatbots are “illegal interceptions” and violations of the Florida Security of Communications Act (FSCA), Chapter 934, Fla. Stats.



**HOW TO  
PROTECT  
YOURSELF:  
AVOID GETTING SUED**

# STEPS TO PROTECT YOURSELF:

- **CHECK YOUR WEBSITE – ARE YOU USING A CHATBOT?**

- No – done, nothing else to do
- Yes – you need to have a disclaimer (if you don't already)

- **ADD A DISCLAIMER TO YOUR CHATBOT**

- Feel free to edit the templates on the next slide to meet your business' needs
- Templates – on the next slide

- **UPDATE YOUR PRIVACY POLICY**

- Make sure your privacy policy addresses what you do with data your website collects and maintains

# CHATBOT DISCLAIMER TEMPLATES:

- Welcome! Please fill out the form below to get connected to a representative. By continuing with this chat, which uses an automated chatbot app and/or a live representative, you consent to and acknowledge the collection, recording, and use/disclosure of information about you and this chat session and service providers acting on our behalf in accordance with our privacy policy.
- By continuing with this chat, which uses an automated chatbot, you consent to and acknowledge that we and our service providers will keep a transcript of this chat.
- Before we begin, you should know that any information you type will be stored and used in accordance with our privacy policy.

# EXAMPLE:

The screenshot shows a web browser window with the address bar displaying `miamirealtors.com`. The page content is divided into two main sections: "WHAT YOU NEED TO DO NOW!" and "WHAT'S THE BASIS OF THESE LAWSUITS?".

**WHAT YOU NEED TO DO NOW!**

- If you are using a chatbot on your website, add disclaimer
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- Feel free to edit the disclaimer to meet your business' unique needs.
- Make sure your privacy policy addresses what you do with the information collected.

**WHAT'S THE BASIS OF THESE LAWSUITS?**

- **What the plaintiff is claiming.** The plaintiff – who has filed a lawsuit against the Miami Association of REALTORS – claims that the failure to include a disclaimer prior to recording “live chat” conversations constitutes “illegal interceptions” and violations of the [Florida Security of Communications Statute](#).
- **The one case plaintiff cites is outdated and does not accurately reflect the law.** The attorneys use to support their position is [O'Brien v. O'Brien](#). However, this was a divorce case where the wife secretly recorded her husband's conversations so that she could catch him chatting with another woman.
- **Possible defenses to the new wave of lawsuits.** The [O'Brien](#) case is fundamentally different than the scenario described in this wave of lawsuits and there have been many new cases addressing the FSCA in the past 20 years since that case was decided. Below are some possible defenses; however, MIAMI REALTORS® is not a law firm and cannot provide legal advice.

**Chatbot Interface:**

The chatbot interface is titled "MIAMI Realtors®" and shows a conversation with "MIAMI Professional-Ai".

8:52 AM

MIAMI Professional-Ai

Hi there. Got a question? I'm here to help.

By continuing with this chat, which uses an automated chatbot app and/or a live representative, you consent to and acknowledge the collection, recording, and use/disclosure of information about you and this chat session by MIAMI Association of REALTORS and service providers acting on MIAMI REALTORS' behalf in accordance with the Privacy Policy and Terms of Use.

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8:52 AM

Type a message

Built with Zendesk

Inbox • evia



**WHAT TO DO  
IF YOU ARE  
SUED?**

# WHAT TO DO IF YOU ARE SUED

- **LET US KNOW ASAP**

- Email [legal@miamire.com](mailto:legal@miamire.com)

- **LEGAL HOTLINE**

- Call or email the Florida REALTORS® Legal Hotline
- 407-438-1409 -or- <https://bit.ly/floridarealtorslegalhotline>

- **CALL YOUR ATTORNEY**

- If you don't have one, you can contact The Florida Bar Lawyer Referral Service (<https://bit.ly/flbar>) or the Miami-Dade Bar Lawyer Referral Service (<https://bit.ly/miamidadebar>) for a referral

- **LEGAL ACTION FUND**

- Consider applying for the Florida REALTORS® Legal Action Fund (<https://bit.ly/legalactionfund>)
- If you do this, let us know (email [legal@miamire.com](mailto:legal@miamire.com))

# WHAT DEFENSES MIGHT YOU HAVE?

## #1 – THE ONE CASE THE PLAINTIFF CITES IS OUTDATED AND DOES NOT ADDRESS CHATBOTS

The one case that the plaintiff and their attorneys use to support their position is O'Brien v. O'Brien, 899 So. 2d 1133 (Fla. 5th DCA 2005). However, this was a divorce case where the wife secretly installed spyware on her husband's computer so that she could catch him chatting with another woman online.

### IMPORTANT LINKS:

**FSCA** – <https://bit.ly/fsca94>

**O'Brien case** – <https://bit.ly/obriencase>

**Jacome case** – <https://bit.ly/jacomecase>

# WHAT DEFENSES MIGHT YOU HAVE?

## #2 – FSCA MIGHT NOT APPLY TO CHATBOTS

Commonplace analytics software – and arguably other types of software – to improve a website browser’s experience likely falls outside of the FSCA. The FSCA’s purpose was to: “(1) protect the privacy of wire and oral communications, (2) prevent organized criminals from using oral and/or wire communications in their criminal activities, and (3) ensure that any information from such oral and wire communications would not be misused.” See *Jacome v. Spirit Airlines*, Case No. 2021-947-CA-01, 2021 Fla. Cir. LEXIS 1435, 2021 WL 3087860 (Fla. Cir. Ct. June 17, 2021).

# WHAT DEFENSES MIGHT YOU HAVE?

## #3 – NO REASONABLE EXPECTATION OF PRIVACY

Here, consumers do not have a reasonable expectation of privacy, as they are on public-facing websites asking questions of chatbots. While the plaintiff in this wave of lawsuits cites to the O'Brien case to support their position, they fail to include this relevant part of it: "...when analyzing an electronic communications FSCA claim, the court discussed how '[e]nactment of [the FSCA] connotes a policy decision by the Florida legislature to allow each party to a conversation to have an expectation of privacy from interception by another party to the conversation. The purpose of the Act [FSCA] is to protect every person's right to privacy and to prevent the pernicious effect on all citizens who would otherwise feel insecure from intrusion into their private conversations and communications.'" Jacome, 2021 Fla. Cir. LEXIS 1435, \*12, citing to O'Brien, 899 So. 2d at 1135 (citations and quotation marks omitted). There "...can be no reasonable expectation of privacy from a third-party website owner when a consumer voluntarily browses through that third-party's website." Jacome, 2021 Fla. Cir. LEXIS 1435, \*12.

# WHAT DEFENSES MIGHT YOU HAVE?

## #4 – CONSUMERS ARE CONSENTING TO USING CHATBOTS

Even if the chatbots on websites for the general public were subject to the FSCA, these chatbot “interceptions” would likely be permitted, as consumers are consenting to the “interceptions” by using the services. Fla. Stat. Sec. 934.03(2)(d). Moreover, if a website has a privacy policy that outlines the use of the website and its services (like a chatbot, for example), this would further support a claim that consumers are consenting to the chatbots.

# REMEMBER:

This is not legal advice or representation and the defenses and/or counterclaims available to you will depend on the unique circumstances of your case. MIAMI REALTORS® urges you to consult with legal counsel if you are sued.



**Q & A**

# ASK LEGAL!

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