

Top of Mind E-Book

TCPA

A text messaging compliance guide for mortgage industry leaders

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A Publication of



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About Top of Mind Networks

Your Partner in Understanding TCPA Compliance

Founded in 2003, Atlanta-based Top of Mind Networks (<https://www.topofmind.com>) started as a bootstrapped direct-mail marketing company.

Today, the company is recognized as the mortgage industry's most-relied-upon provider of marketing automation and creative content solutions. From individuals to enterprise lenders, Top of Mind's SurefireCRM helps thousands of mortgage professionals win new business, earn repeat business and deserve referral business with intuitive, "set it and forget it" workflows and award-winning content that inspires emotional connections with customers.



Introduction

Telephone Consumer Protection Act of 1991 (TCPA)

Smart salespeople will always find a way to be where their consumers are. Today that means being able to communicate by text message.

For mortgage borrowers, communicating by text message is convenient and natural. Texting with their mortgage advisor of choice doesn't require any special tools, no complicated downloads, and there are no new skills to learn.

Text messaging allows Loan Officers the ability to reach contacts where they already are—on their phones. All communication from Loan Officers to their borrowers is personal and time-sensitive. Aside from ease of use and speed, text messaging has a commanding 98% open rate!

This compelling statistic, combined with the promise of consumer attention, has created a voracious appetite for an easy to use, mortgage-industry-compliant text message tool. Company decision makers will want to partner with a vendor that offers two-way texting (preferred over spammy “blasting”) in order to enable real human conversations.

Mortgage advisors may already be using text messaging tools found on the internet that were not created for the mortgage industry. Use extreme caution as these tools do not carry the feature-set that mortgage industry leaders need to reduce

their compliance burden. Along with TCPA navigation, this guide will help mortgage leaders consider which features are necessary when choosing a text messaging service provider for your business. Organizations must consider the potential for legal exposure under the Telephone Consumer Protection Act of 1991 (TCPA).

The TCPA was passed in 1991 by Congress in an effort to protect the public from nuisance telemarketer phone calls. Initially put in place to regulate the number, frequency, and type of phone calls (cold calls anyone?), the TCPA is now interpreted by the judicial system to protect the public from unwanted marketing text messages.

It is imperative for decision makers to seek and consult legal guidance to ensure they are acting within the TCPA's compliance obligations.

To help your organization navigate TCPA's standards, this guide contains 6 best practices.

1 Get Permission (opt-ins)

2 Avoid Blast or Mass Texting

3 Use a Real Phone Number, Not a Shortcode

4 Text Like a Person, Not a Robot

5 Support the "STOP" Keyword Opt-outs

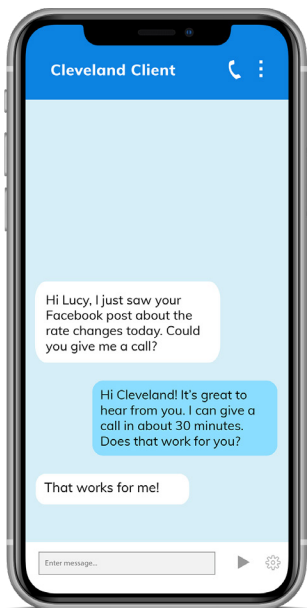
6 Keep Records of Consent

Please note that our advice is for informational purposes only. It's not meant to substitute for advice from qualified legal counsel. Readers of this Guide should contact their attorney to obtain advice with respect to any particular legal matter. Only your attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation.

1

Get Permission (opt-ins)

Consent is the foundation of the TCPA. If a consumer says, yes, it's okay to text me, then it's okay to text them. Consumers provide consent when they initiate a text conversation. If a consumer chooses to send a text to a business phone number, they expect a response. As long as the text exchange happens naturally based on a text-and-response pattern, it is no different from answering the phone and engaging in a conversation.



Here's an example of an exchange initiated by a consumer.

Lucy Lender receives an incoming inquiry from her borrower Cleveland Client.

Since Cleveland has initiated this conversation, Lucy is free to continue to text Cleveland.

Permission By Form Opt-In

Whether you're giving away an e-book, or directly booking pre-approval consultation calls, a simple check-box on your form will allow consumers to consent to text messages.

Surefire's Power Messaging sets you up to win by instantly connecting you to your prospects. Zero downtime. Total focus.

Close More Deals

- Instantly reply to any lead from any source.
- Your marketing dollars go further by being first to respond.
- Offer 24/7 service with your Surefire dedicated text line.
- Plus, effortlessly keep everyone on the same page with in-process updates delivered via text.

Your prospects and clients demand instant availability. Give them what they want with Surefire's Power Messaging.

First Name *

Last Name *

Your Mobile Number *

☒ I give permission to Maggie Mae to send me SMS messages. Message and data rates may apply.

Email *

Company Name

Get Started

This permission is noted in the contact's record. Opted-in contacts will receive communication via text; contacts who have not yet opted-in (and especially opted-out) will not. Should your organization face a marketing audit, these opt-ins are date-stamped and verifiable.

Permission via Prior Established Business Relationship (EBR)



You may feel restricted from reaching out to past clients since no opt-in consent exists on record for them. But, you're in luck. Some interpretations of TCPA accommodate 'existing business relationships,' which is outlined by the FCC.

According to the FCC, a prior Established Business Relationship (EBR) allows for texting or talking with a person who has a prior established business relationship with your organization. If a contact asked for information within the past three months or they've closed a mortgage loan (made a transaction) with your business in the past 18 months, you have an established business relationship with that contact.

Here's a nice example of a birthday message to a past client.

2 Avoid Blast or Mass Texting

Mass marketing text messaging tends to leave a bad taste in consumers' mouths. To avoid seeming like a mass marketer, avoid short messages blasted out to consumers at a high rate. Instead, focus on two-way conversational texting. Conversational texting is more natural and will get a more significant response from consumers. Conversational texting will also help reduce the risk of a TCPA claim.

The TCPA requires that telemarketing calls and texts should only be sent between the hours of 8:00am and 9:00pm in the recipient's time zone. Any texts prior to 8:00am or after 9:00pm would be prohibited.

3 Use a Real Phone Number, Not a Shortcode

To maintain two-way conversational messaging and steer away from a mass marketing feel, use a dedicated business phone number to engage with consumers. Using a long business phone number in the standard 10 digit format like 555-867-5309 adds a more natural, human-like approach.

4 Text Like a Person, Not a Robot

A Mortgage Originator will always be on the lookout to streamline and automate their business. Auto-responding to an incoming lead is an excellent example of that. Once the lead replies to the Loan Officer, the Loan Officer should not attempt to automate those interactions. Though it is tempting with the new 'chatbot' technology, turning yourself into a chatbot should be avoided. When used thoughtfully, text messaging for business can be a human-connection catalyst.

5 Support the "STOP" Keyword for Opt-outs

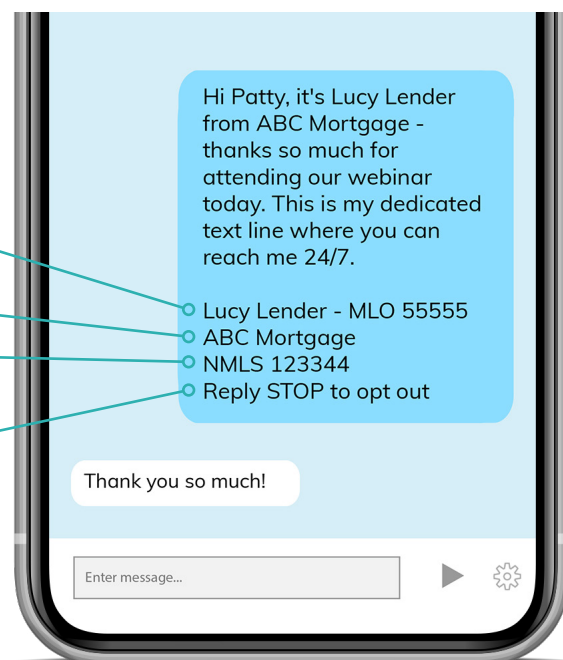
To prevent texting after consent is revoked, make sure your text messaging software automatically implements a STOP command, which prevents future texts, even if attempted. Any texting tool that your organization adopts must honor opt-out commands. To ensure your opt-out requests are honored, businesses should seek a texting platform that supports the STOP keyword to allow consumers the option to opt-out.

Originator's full name
and MLO number

Company name

Company's NMLS number

Opt-out STOP command,
automatically stops future
text messages



Enforcement Actions

Businesses are limited by the TCPA on how they can contact consumers via their mobile phones, and consumers are also given the option to opt out of calls and texts that are unwanted. When businesses choose to not abide by the TCPA's regulations, litigation and enforcement actions can take place.

The types of actions that most commonly lead to enforcement actions are:

- Continuing to place telemarketing calls or texts to consumers even after said consumer has opted out.
- Bulk texting or calling mobile numbers using generic or pre-recorded messages without permission.

To legally make calls and texts, the business must have permission from the consumer beforehand. The consumer can give permission in the following ways:

- Prior express written consent for automated texts that are sent for a marketing or sales purpose (47 C.F.R. § 64.1200(a)(2)).
- Verbal or written consent for informational, non-telemarketing texts (47 C.F.R. § 64.1200(a)(1)(iii)).

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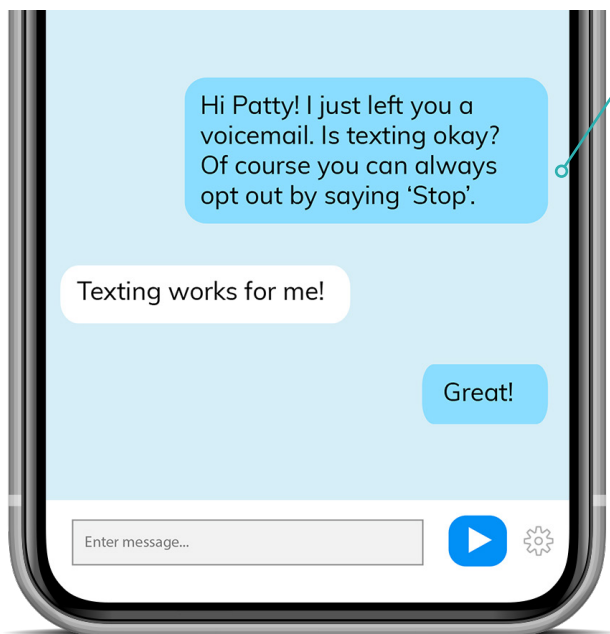
Keep Records of Opt-in Consent & Opt-outs

The consumer should have the option to opt out from receiving texts. Once the consumer makes a do-not-contact request, consent is revoked, and the company may no longer contact them. The keyword “STOP” typically supports opt-out requests. Once a consumer replies with the opt-out keyword, the company should then take that individual out of all texting programs to eliminate contact by text in the future.

A texting platform that maintains a compliant standard will minimize the risk of TCPA lawsuits. Archiving conversations, opt-ins, and opt-outs will provide protection and can be useful when providing proof that you acted in a compliant way. Your texting platform should be able to archive any conversation, including SMS, MMS, and picture messaging.

What About Reissued Phone Numbers?

Consent from the previous consumer doesn’t transfer to the next consumer just because they have the same phone number. Due to that, companies can be liable for texting or calling a reassigned number, even if that company has no knowledge that the reassignment took place.



Conversational Reminder “STOP” Example

The tone has changed and appears a bit less formal.

The message is still operating under TCPA best practices.

You can be personable and be TCPA compliant.

Do Not Call Registry

The National Do Not Call Registry is a list of phone numbers from consumers who have indicated their preference to limit the telemarketing calls they receive.

Do Not Call policy applies to text message marketing. You should not solicit by text or call any phone number on the Do Not Call registry without express consent (opt-in).

The registry is managed by the Federal Trade Commission (FTC). It is enforced by the FTC, the Federal Communications Commission (FCC), and state officials.

Do Not Call provisions cover any plan, program, or campaign to sell goods or services. They include calls by telemarketers who solicit consumers, sellers who provide, offer to provide, or arrange to provide products or services to consumers in return for payment as part of a telemarketing transaction.





A company with which a consumer has an established business relationship may call for up to 18 months after the consumer's last purchase, last delivery or last payment unless the consumer asks the company not to call again.





If a consumer's phone number appears on the DNC list, the company must honor the request not to call or text. Companies should have procedures in place to avoid calling numbers on the DNC list. Once a phone number is registered on the DNC list, companies have 31 days to update their records. If the company calls again, it may be subject to fines.

Penalties associated with violations of the TCPA can include \$500 per violation and up to \$1,500 per willful violation. It's not uncommon to see significant settlement amounts for class action TCPA lawsuits.

[More information is available from the FTC website here.](#)

TCPA Dos & Don'ts

-  Do get consent;
 - Conversational messages require implied consent. E.g., Consumer texts first and/or existing relationship.
 - Informational messages require express consent. E.g. "Is it okay to text you?" and/or Opt-in Forms.
 - Promotional messages require express written consent. E.g., Opt-in Forms, online or paper.
-  Do maintain Opt-out and "Do Not Contact" lists.
-  Do list your full name, MLO number, company name, branch NMLS number, and provide contacts with "STOP" for Opt-out.
-  Do have your legal department review your company's text messaging policies, interpretation of the TCPA, and all other relevant policies, guidelines, and regulations.

-  Don't text anyone that you do not have consent to text.
-  Don't purchase lists of phone numbers.
-  Don't use shortcodes, artificial voices, or recordings.
-  Don't text or call a contact before 8 am or after 9 pm, local time, also referred to as a 'safe send' window.

About the Author



Maggie Mae

Product Manager, Top of Mind Networks

As lead product manager, Mae is responsible for building and enhancing the capabilities of Top of Mind's market-leading Surefire CRM. Mae's first major project upon joining the firm was to evolve Surefire's flyer system and single-property website capabilities to eliminate the need for administrators to create collateral manually.

Last year, Mae helped Top of Mind expand its multiple listing service (MLS) coverage to over 650 boards across all 50 U.S. states, making its database the industry's most extensive and making it easier than ever for loan officers to automate the creation of detailed, property-specific collateral for their customers and real estate partners.

Mae's work has helped the platform become the de facto industry standard for mortgage lenders nationwide. Independent mortgage advisory firm STRATMOR Group has identified Surefire by Top of Mind as the mortgage industry's #1 CRM for the last two years based on market share.



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