

Client Alert

October 2013

New Telemarketing and Texting Regulations Take Effect October 16, 2013

If your business uses autodialers to telemarket or to send mass text messages, be advised that new, complex regulations take effect on October 16, 2013 under the Telephone Consumer Protection Act (TCPA). In a nutshell, for many, consent to send these types of messages will now require prior express written consent, with no exceptions for existing business relationships. Express written consent is specifically defined as a written agreement where the recipient acknowledges that:

1. by signing the agreement, the recipient authorizes the specific seller to deliver autodialed, pre-recorded and/or text marketing text messages to a designated phone number; and
2. the recipient is not required to sign the agreement or agree to enter into it as a condition of purchasing any property, goods or services.

Consent must be obtained knowingly and either in writing or in a manner that complies with the E-Sign Act. Even if you previously obtained prior express written consent, many prior authorizations may not pass legal muster under the new TCPA regulations. There is no grandfathering of prior authorizations.

Exposure for non-compliance is significant, as the potential for penalties is up to \$1,500 per call or text.

If you need guidance on these new regulations or have any questions, please call Olshan's Advertising, Marketing & Promotions Group.

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