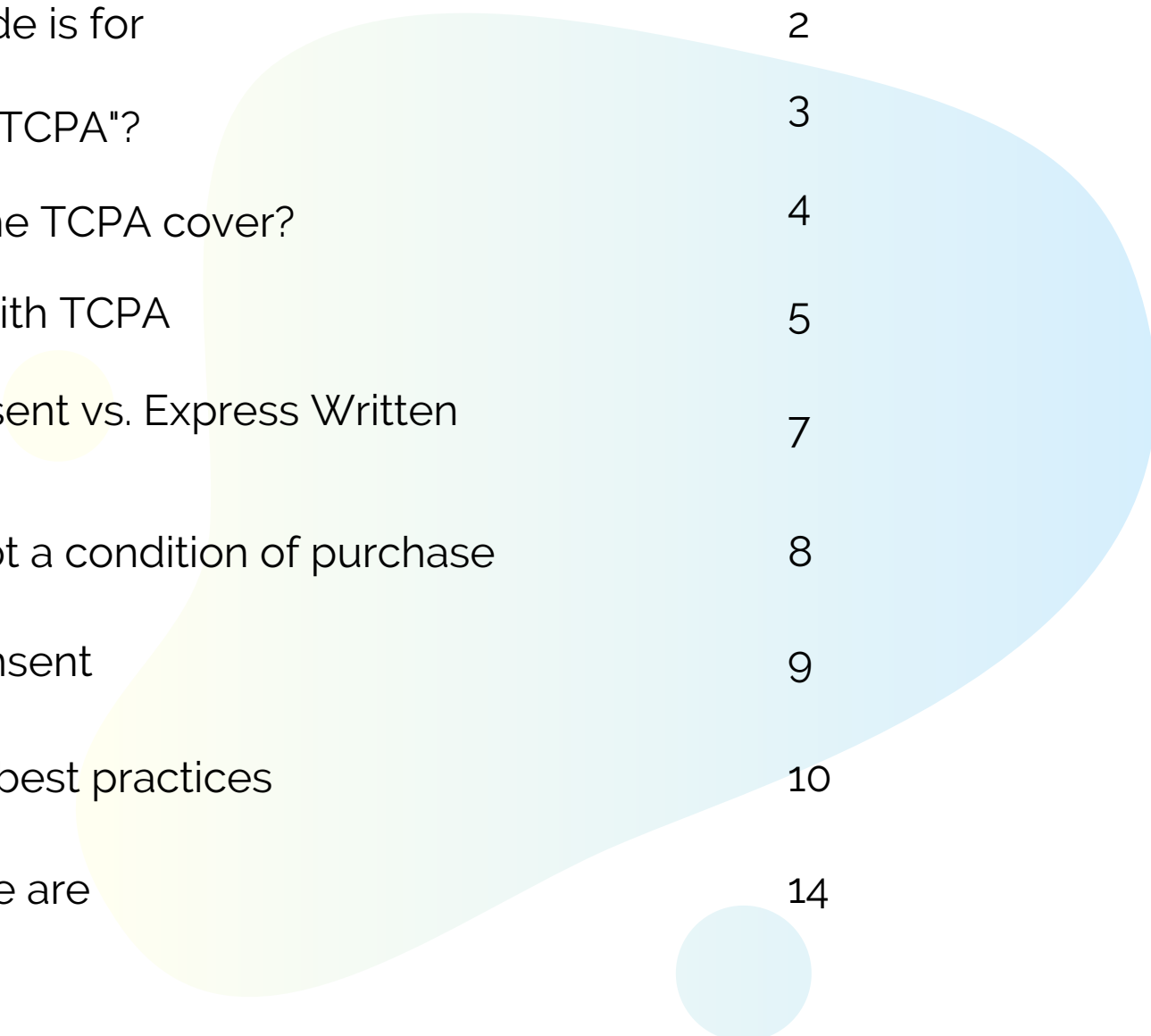




TCPA Compliance

The Essential Guide

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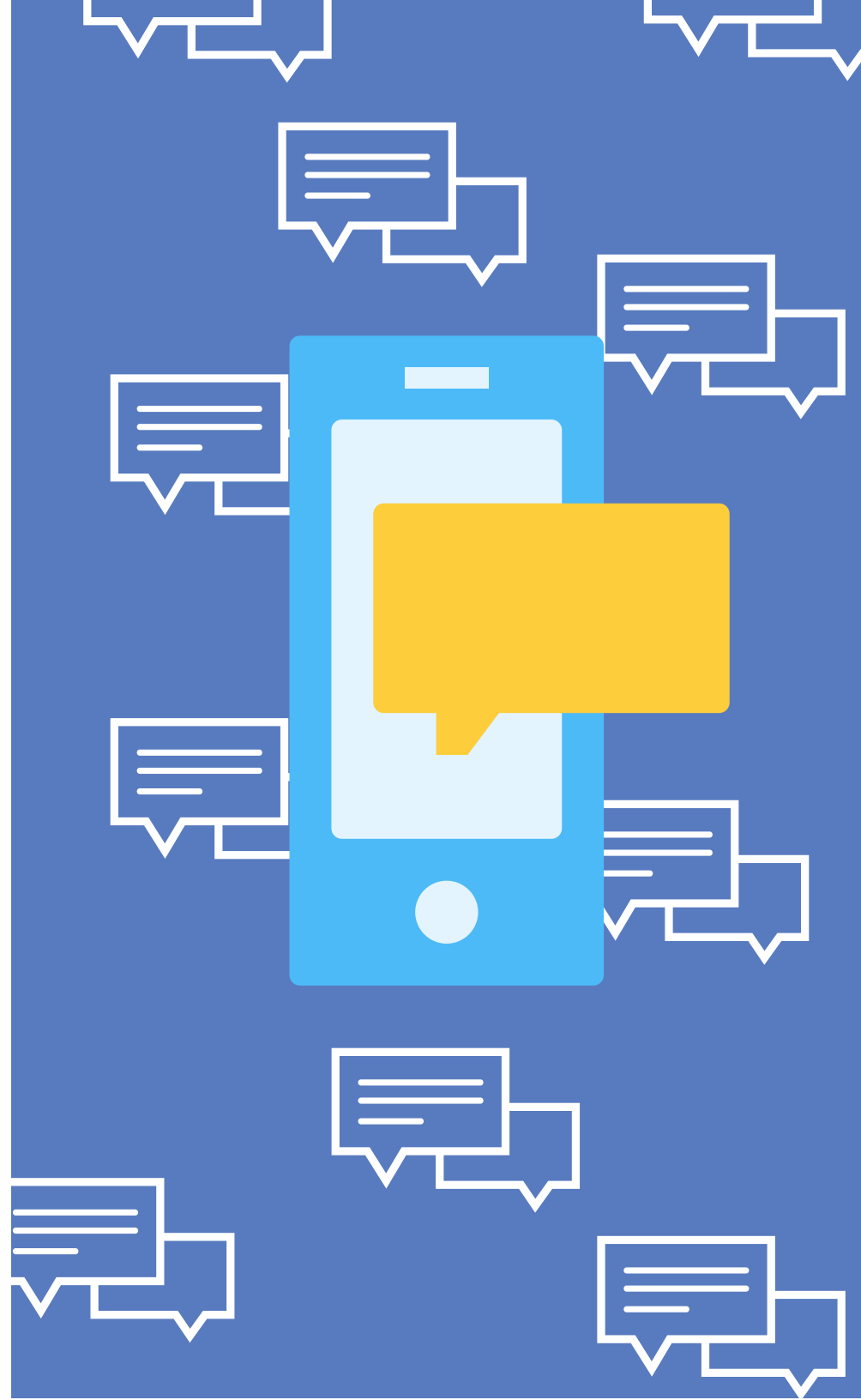
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Who This Guide Is For

This guide is for any company that currently uses or is considering using text messaging as a way to engage with its customers. This guide is a critical resource for anyone in the organization who uses text messaging as a way to communicate with customers.

The purpose of this guide is to provide details about the changes to the Telephone Consumer Protection Act (TCPA) enacted on October 16, 2013. Changes to the law requires companies to obtain appropriate consumer consent prior to sending them marketing text messages.

This guide will also present observations of best practices as it relates to the process of obtaining consent. We intend for this resource to be directional guidance and recommend you seek the advice of legal counsel to ensure you are in full compliance with TCPA laws.



What Is The TCPA?

The Telephone Consumer Protection Act was adopted by Congress in 1991 and is a federal statute. The Federal Communications Commission ("FCC") is one of two federal agencies authorized to make rules under the TCPA. The other agency is the Federal Trade Commission (FTC).

The Federal Communications Commission (FCC) enforces the TCPA, and interprets the law in ambiguous cases. However, the TCPA also includes a private right of actions, which means that consumers themselves can file individual or class action lawsuits against TCPA violators.

The TCPA is an extremely strong statute and its protections are growing almost on a daily basis. Today, this law is most relevant to telephone calls and text messages to cellular devices, calls to residential lines from an Automatic Telephone Dialing System (ATDS), and the use of pre-recorded or robo-calls.

Organizations that use this kind of technology to engage with consumers must have certain policies and procedures in place in order to avoid violating TCPA. In the sections that follow, we'll discuss the main provisions of the TCPA as it relates to wireless telephone numbers, the two types of required consent, and actions we've seen our clients take in order to be compliant with the law.



What Does The TCPA Cover?

The TCPA was originally created to protect consumers from unsolicited telemarketing phone calls. Today any company that seeks to send texts has to comply with TCPA.

Here's what the law covers:

- TCPA applies to all system launched calls including telemarketing, text messages, and pre-recorded calls
- The law prohibits contact with consumers unless the company has "prior express consent" to contact the consumer
- The type of consent needed depends on the technology, type of device, and the content of the message.

The most common violations to TCPA are:

- Texts or calls to a mobile phone using a generic or pre-recorded message without permission, and
- Placing telemarketing calls or texts to consumers after they opt out.

Penalties for violating TCPA

The consequences for violating TCPA laws can be quite substantial. When TCPA violations are brought to court by consumers who received text message spam, the violating company could be fined statutory damages of \$500 per call or text.

If the conduct is considered willful and knowing, meaning that TCPA violations were knowingly done and the company turned a willful blind eye to the actions, the courts may award Treble damages as high as \$1500. It is up to the courts to decide what is willful and knowing conduct.

Keep in mind, the above penalties would result from a lawsuit. There could be additional fines imposed by the FCC or FTC.

Interesting Fact:
In 2007, there were 14 TCPA cases in Federal Court. In 2018, that number grew to 3803.

Complying With TCPA

Under TCPA, businesses are prohibited from calling any number that appears on the state or Federal Do Not Call (DNC) lists established by the law. In addition, companies cannot call or text anyone who has been asked to be added to their own internal list of contacts who have requested not to be contacted.

When TCPA was established in the 90's, people were getting a lot of calls on their landlines interrupting dinnertime. Also during that time, all calls to cell phones, even incoming calls, incurred a charge. Since there were rising concerns that telemarketing companies would shift calling costs to wireless consumers, Congress put extra protection on calls placed to cell phones. Although less intrusive, text messages are viewed just like phone calls in the eyes of the law, and as a result, sending a text message requires you to comply with TCPA.

Consent is at the center of TCPA compliance. The level of consent required depends on the content of the message, who you're calling, and how you're calling them.

The key requirements that drive most of the litigation under TCPA can be segmented in two categories:

1) Calls or text to wireless numbers

The law prohibits calls or texts to wireless phone numbers using auto-dialed, pre-recorded, or artificial voice calls, except in the event of an emergency or "prior express consent". This applies to all calls and messages regardless of the content. In 2012, the FCC adopted additional "written consent" rules that apply to telemarketing calls.



Complying With TCPA (cont.)

2) Calls to residential numbers

The law prohibits pre-recorded or artificial voice calls to residential land lines without "prior express written consent". The law doesn't apply to calls that aren't solicitation or telemarketing calls, or those not made for a commercial purpose.

So, unlike wireless numbers, this law only applies if the message is marketing related and is not concerned with auto-dialers. Another difference is that calls to residential numbers are a bit more permissive, allowing emergency calls, tax exempt non-profit organizations, and healthcare calls subject to HIPAA.

For the purposes of this ebook, we'll focus on text messages sent to wireless numbers. **For many companies, the most confusing part of this provision is that TCPA applies to both marketing and non-marketing messages.**

You may think that because your message is not marketing-related, since you are simply reaching out to your members, that the statute does not apply to you. This is not the case.

When sending a message via text, it's important to receive the appropriate levels of consent. The only exemption is when a member initiates a text conversation with your credit union. This implied consent to message them holds as long as your response remains within context.

When it comes to consent, the two most important things you can do to maintain compliance is to:

- 1) make sure you get the consumers consent in writing, either the good ol' analogue way with paper and pen, or digitally
- 2) stay on top of the accuracy of your contact list, ensuring you have the most up to date contact information and stop requests prior to each send.

The courts have said that the defendants have the burden of proof for the consent. Meaning, as a company that sends text messages, you have to come forward with your evidence that the person you sent the message to provided consent to receive that message.

Express Consent Vs. Express Written Consent

When consent is required, two types of "prior express consent" under the TCPA may be applied.

1) Prior express consent

This type of consent is required to place auto-dialed, **non-solicitation** calls or texts to a cell phone. This type of consent can be written or verbal. Although it's not defined in the original 1991 statute, several rulings have defined what "prior express consent" means.

It's best to check with legal counsel to understand the ideal way to obtain express consent. Here are a few examples that demonstrate how a consumer can give prior express consent:

- Encouraging perspective and current members to enroll for text messaging to receive updates on important news, information on upcoming events, and special offers related to the credit union.
- Asking for the member's cell phone number in the account disclosures and/or loan application. The fact that a member provides their number and signed up allows the credit union to contact them via text and phone in order to successfully execute business with that member.

2) Prior express written consent,

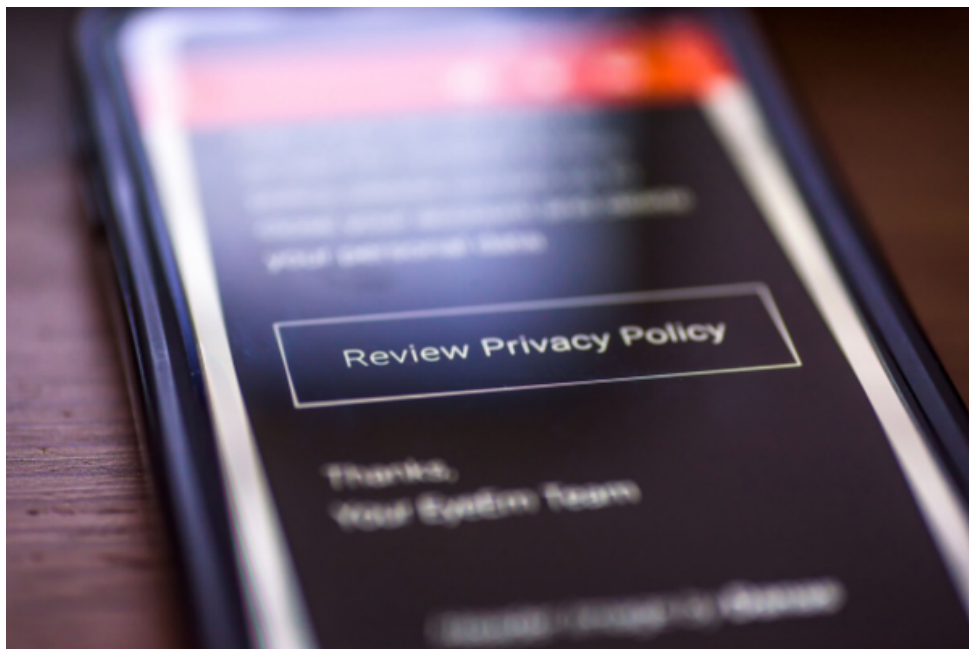
This requirement is a heightened level of consent that must be evidenced by a written agreement. **It is important to note that the consumer's written consent must include the consumer's phone number and signature.**

The written agreement requesting the consumers consent must include a disclosure that is "clear and conspicuous" and informs the consumer signing that:

- 1) by signing the agreement, the consumer is authorizing auto-dialed telemarketing or advertising calls or texts, and
- 2) the consumer is not required to sign the agreement as a condition of purchasing any property, goods, or services.

To expand on our previous retail example, the company that received the express consent to send order status updates must get express written consent to send that same consumer marketing messages.

Consent Not a Condition of Purchase



Many companies will offer terms and agreements, particularly during a check out process. As a consumer yourself, you may have seen "consent is not a condition of purchase". The TCPA requires several different phrases in agreements presented to consumers, and this is one of them.

As previously mentioned, this disclosure must be included in the agreement presented to the consumer. For any brand that sells goods or services, you must make that affirmative representation to consumers.

The statement means that consumers aren't required to provide their phone number and give their consent to receive auto-dialer SMS messages before they are allowed to make a purchase with a seller. Not only is this statement required by law, it's also just good business to allow the consumer to complete a transaction without presenting any potential obstacles.

Any company that doesn't disclose this required term, in their written terms and condition agreement with the customer, faces the risk of violating TCPA. If brought to court, the plaintiff's attorney could argue that the absence of this statement makes the entire written agreement invalid.

Revoking Consent

Consent doesn't expire, per se. Once the consumer has granted consent, it doesn't have a shelf life or "good until" date, but consumers can revoke that consent. Just as consumers can "opt-in" to receive messages, they are also entitled to "opt-out" or revoke that consent at any time.

Credit unions need to opt-out consumers or members who withdraw their consent through reasonable means. There's still some debate within the FCC to interpret what "reasonable" means, but there are some standard ways in use today that are considered best practice.

The use of help/stop instructions is a standard and common practice among companies. If the consumer texts "help" to a company, they receive assistance in a reasonable amount of time. If the consumer texts "stop" then your credit union should immediately stop sending any texts to that number until consent is granted again.



Although stop requests are honored through carriers, we help credit unions go a step further to honor their members' requests. Quiq enables you to better manage your conversations by recording and sharing a record of in-conversation stop and opt-out requests. Meaning, Quiq sends you a list of all members that opt-out of text messages which take place during a conversation within the Quiq platform.

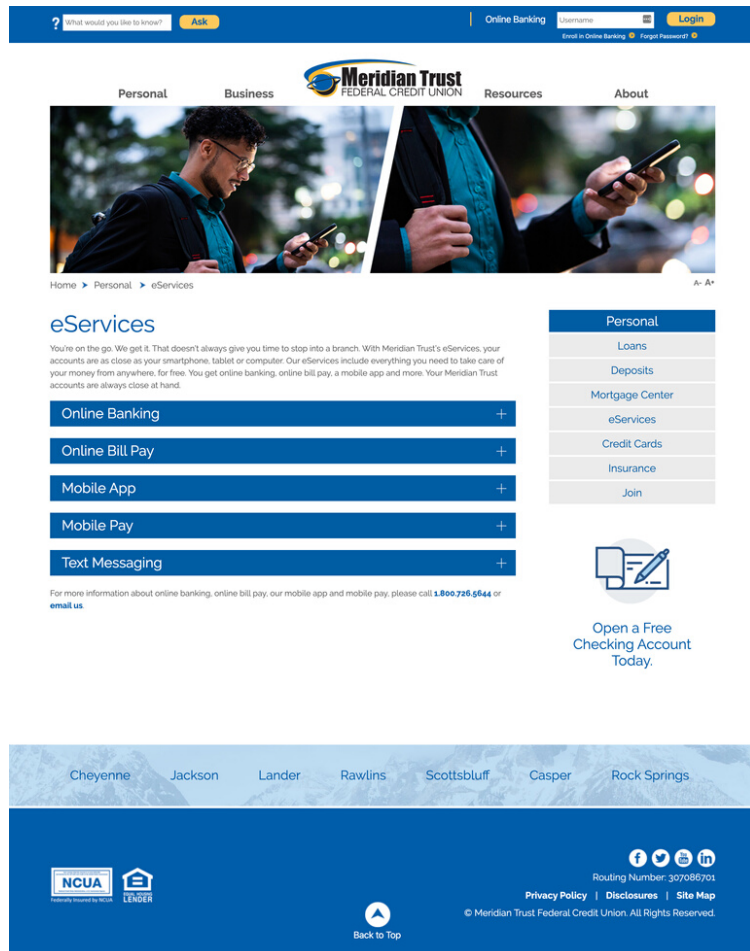
Re-assigned Numbers

It's fairly common to take your number with you in the event you switch mobile carriers, however, there are instances when a consumer provides consent to a company with one number and then surrenders that number to be reassigned.

If this happens, you must gain consent from that consumer again to text their new number. What's more, you must comply with any opt-out requests received from the new owner of the number.

Examples of Best Practices

- Download a copy of the TCPA rules directly from the FCC website:
<https://www.fcc.gov/sites/default/files/tcpa-rules.pdf>
- Include Help/Stop instructions within your message
- Promote the benefits of text messaging and make it easy for members to sign up



Text Messaging

You can get text messages from Meridian Trust!

All you have to do is opt in to this efficient service by enrolling below.

With text messaging capabilities, whether you're opening a new account or applying for a loan, you'll be able to have fast and secure one-on-one communications with our new account and lending teams.

Text messaging can also allow you to get important news, information on upcoming events, and special offers related to the credit union.

Enroll

Meridian Trust encourages perspective and current members to sign up for text messaging through the eServices page on the company's website.

Examples of Best Practices

- Georgia's Own Credit Union has a consent to contact clause in their Membership Agreement and Disclosures document.



e. Consent to Contact. You agree we and our third-party debt collectors may contact you by telephone or text message at any telephone number associated with your account, including wireless telephone numbers (i.e., cell phone numbers) which could result in charges to you, in order to service your account or collect any amounts owed to us, excluding any contacts for telemarketing purposes as prescribed by law. You further agree methods of contact may include use of pre-recorded or artificial voice messages, and/or use of an automatic dialing device. You may withdraw the consent to be contacted on your cellular device by written notice to us at P.O. Box 105205 Atlanta, GA, 30348, by email to DoNotCallMyCell@georgiasown.org, via phone at 800-533-2062 or by any other reasonable means. If you have provided a wireless telephone number (cell phone number), you represent and agree you are the wireless (cell phone) subscriber with respect to the wireless telephone number (cell phone number) provided. You represent and agree further you are and will be the wireless telephone (cell phone) subscriber with respect to each wireless telephone number (cell phone number) provided by you to the Credit Union. Should you relinquish or otherwise no longer be the subscriber to a wireless telephone number (cell phone number) you provided to the Credit Union, you represent and agree that

Membership and Account Agreement

Funds Availability Policy Disclosure

Electronic Fund Transfers Agreement & Disclosure

Examples of Best Practices

- Meridian Trust includes express consent is part of the terms and conditions of opening an account,

MONITORING AND RECORDING TELEPHONE CALLS AND CONSENT TO RECEIVE COMMUNICATIONS - We may monitor or record phone calls for security reasons, to maintain a record and to ensure that you receive courteous and efficient service. You consent in advance to any such recording. We need not remind you of our recording before each phone conversation.

To provide you with the best possible service in our ongoing business relationship for your account we may need to contact you about your account from time to time by telephone, text messaging or email. However, we must first obtain your consent to contact you about your account because we must comply with the consumer protection provisions in the federal Telephone Consumer Protection Act of 1991 (TCPA), CAN-SPAM Act and their related federal regulations and orders issued by the Federal Communications Commission (FCC).

- ◆ Your consent is limited to this account, and as authorized by applicable law and regulations.
- ◆ Your consent does not authorize us to contact you for telemarketing purposes (unless you otherwise agreed elsewhere).

With the above understandings, you authorize us to contact you regarding this account throughout its existence using any telephone numbers or email addresses that you have previously provided to us or that you may subsequently provide to us.

This consent is regardless of whether the number we use to contact you is assigned to a landline, a paging service, a cellular wireless service, a specialized mobile radio service, other radio common carrier service or any other service for which you may be charged for the call. You further authorize us to contact you through the use of voice, voice mail and text messaging, including the use of pre-recorded or artificial voice messages and an automated dialing device.

If necessary, you may change or remove any of the telephone numbers or email addresses at any time using any reasonable means to notify us.

Examples of Best Practices

- Community First Credit Union includes express consent as part of their membership and account agreement.



P.O. Box 2600
Jacksonville, FL 32232
904.354.8537
800.342.8416
www.CommunityFirstFL.org

CONSUMER (PERSONAL) ACCOUNTS

MEMBERSHIP AND ACCOUNT AGREEMENT

This Agreement covers your rights and responsibilities concerning your accounts and the rights and responsibilities of the Credit Union providing this Agreement (Credit Union). In this Agreement, the words "you," "your," and "yours" mean anyone who signs an Account Card, or any other account opening document (Account Card), or for whom membership and/or service is provided. The words "we," "us," and "our" mean the Credit Union.

e. **Consent to Contact.** You agree we and/or our third-party debt collectors may contact you by telephone or text message at any telephone number associated with your account, including wireless telephone numbers (i.e. cell phone numbers) which could result in charges to you, in order to service your account or collect any amounts owed to us, excluding any contacts for advertising and telemarketing purposes as prescribed by law. You further agree methods of contact may include use of pre-recorded or artificial voice messages, and/or use of an automatic dialing service. You may withdraw the consent to be contacted at your wireless telephone number(s) at any time by written notice to us at Community First Credit Union of Florida, P.O. Box 2600, Jacksonville, FL 32232, or by email to communityfirstfl@communityfirstfl.org, by telephone at 800.342.8416 or by any other reasonable means. If you have provided or provide a wireless telephone number(s) to us in connection with your accounts, or any of them, you represent and agree you are the wireless subscriber or customary user with respect to the wireless telephone number(s) provided and have the authority to give this consent. Furthermore, you agree to notify us of any change to the wireless telephone number(s) which you provide to us. You agree to indemnify us and our third-party debt collectors, and hold us and our third-party debt collectors harmless, from and against any and all losses, claims, damages, liabilities, costs or expenses (including any attorney's fees) that arise out of your breach of any of the foregoing representations and agreements. You agree to indemnify us and our third-party debt collectors, and hold us and our third-party debt collectors harmless, from and against any and all losses, claims, damages, liabilities, costs or expenses (including any attorney's fees) that arise out of your breach of any of the foregoing representations and agreements.

governing our protection for the account owner's interest in any security interest or pledge granted by the account owner.

3. **JOINT ACCOUNTS** - A joint account is an account owned by two (2) or more persons.

a. **Rights of Survivorship.** Unless otherwise stated on the Account Card or documented through the Credit Union's online application and authentication process, a joint account includes rights of survivorship. This means that when one (1) owner dies, all sums in the account will pass to the surviving owner(s). For a joint account without rights of survivorship, the deceased owner's interest passes to his or her estate. A surviving owner's interest is subject to the Credit Union's statutory lien for the deceased owner's obligations and to any security interest or pledge granted by a deceased owner, even if a surviving owner did not consent to it.

b. **Control of Joint Accounts.** Any owner is authorized and deemed to act for any other owner(s) and may instruct us regarding transactions on the account. Each owner guarantees the signature or authenticated request of any other owner(s). Any owner may withdraw all or part of the shares, or stop payment on items without the consent of the other owner(s). We have no additional account under your member number. Any owner (other

Conclusion

Messaging is affordable, convenient and efficient. It delivers fast service and has high member satisfaction rates. There are plenty of reasons credit unions and their members love this channel.

Banking is an industry that holds an abundance of potential for messaging from enabling faster member sign-ups, more efficient loan processing, and even streamlined collection efforts. Maintaining TCPA compliance ensures that your credit union is able to engage with your members over this channel.

There are significant benefits for your credit union to use messaging that range from higher pull through rates to increased member satisfaction. Following these best practices, and seeking the advice of legal counsel to ensure you comply with TCPA law will allow your credit union to confidently implement messaging.



Who We Are



Quiq helps brands present their customers with consistently jaw-dropping customer experiences across SMS/text messaging, rich messaging, web chat, and social channels. With Quiq's Conversational Engagement Platform, companies can easily orchestrate commerce and service conversations involving both bots and humans. We think businesses should engage with their customers in the same ways people communicate with their friends.

When customers can reach you when and how they want to reach you, they are happier. Customer satisfaction is higher for messaging channels than voice and email. Your credit union wins too, because by converting phone calls to text, you'll be able to serve more customers with fewer resources.

To be Quiq means to be on the leading edge of customer engagement.

QUIQ.COM