



Dedicated to the Practice of Relationships

PHILADELPHIA OFFICE

Ten Penn Center
1801 Market Street, Suite 1100
Philadelphia, PA 19103
Phone: 215 893-9300
Fax: 215 893-8719

PLEASE REPLY TO PHILADELPHIA OFFICE

NEW JERSEY OFFICE

20 Brace Road
Suite 350
Cherry Hill, NJ 08034
Phone: 856 795-1118
Fax: 856 795-1110

RICHARD J. PERR, ESQUIRE

Direct Dial: 215-893-8724
E-Mail: rperr@finemanlawfirm.com
Member of PA, NJ & NY Bars

TCPA COMPLIANCE ALERT

Solutions By Text Offers Compliant Technology Enhanced Text Messaging Strategies

The accounts receivable management industry continues to seek efficient customer communication channels that are compliant with the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”). Solutions By Text offers compliant technology enhanced opportunities designed to maximize recovery while ensuring that TCPA liability is kept to a minimum.

The TCPA prohibits any person from making a call “using an automatic telephone dialing system [...]” without the prior express consent of the called party. [47 U.S.C. §227(b)(1)(A)(iii)]. The Federal Communications Commission defines the called party as the current subscriber of the telephone line or the regular user of the telephone line. Federal Communications Commission Declaratory Ruling and Order, FCC 15-72 at Para. 73 (July 10, 2015). The FCC has expressly rejected defining the called party as the person “intended” to be called. [FCC 15-72 at Para. 78].

Nevertheless, the FCC has created a “one free pass” rule to prevent liability for calling a cellular telephone number for which the caller obtained consent, but which has been reassigned to another person subsequent to the granting of consent. [FCC 15-72 at Para. 72]. In order for the caller to receive protection from the rule, the caller bears the burden of showing that he/she had no knowledge of the reassignment, and had a reasonable basis to believe there was valid consent to call the number at issue. A single caller gets one free pass. A single caller is defined as the caller and its company affiliates, including subsidiaries. Two affiliated entities may not make one call each; but can collectively make a single call. [FCC 15-72 at Para. 72, n. 261]. One free pass does not apply to a wrong or misdialed number.¹

After demonstrating that there is a reasonable basis to believe that the caller provided valid consent to contact the number at issue, Solutions By Text will issue a single SMS text

¹ / The United States Court of Appeals for the Ninth Circuit has affirmatively held that text messaging is covered by the TCPA when sent using an automated telephone dialing system. *Satterfield v Simon & Shuster, Inc.*, No. 07-16356 (9th Cir. June 19, 2009).

message to the cellular telephone number provided by the client. The message will affirmatively invite the recipient to “opt-in” to further text messages. Prior to sending the message, Solutions By Text will scrub the telephone number in an effort to eliminate telephone numbers where the public owner of the telephone number does not match the intended recipient of the text message. In this way, Solutions By Text will avoid texting telephone numbers that it knows have been reassigned. Should the recipient of the text message choose not to “opt-in,” the telephone number will be relegated to a no further text queue until express consent is provided at some point in the future.

Solutions By Text sends compliant text messages until the recipient indicates via a return text that it no longer wishes to receive text messages. This revocation of consent is documented and stored. The recipient will no longer receive text messages and a record of both express consent and revocation, along with date and time stamps, will be maintained for future access by both Solutions By Text and the client.

Utilizing the protections afforded by the “one-free-pass” rule, Solutions By Text, in conjunction with previously demonstrated consent, is able to reach consumers with the modern technology that is the predominately favored method of communication today. By limiting the texting to a single message, and only continuing the communication after express “opt-in,” Solutions By Text is able to minimize your exposure to TCPA liability. This is a win-win for both the consumer and the creditor. If you would like more information, please contact me at 215-893-8724 or at rperr@finemanlawfirm.com.

The TCPA Compliance Alert is provided for informational purposes only. While we hope that this information will be useful, we do not promise that the information provided is up-to-date, accurate or complete. The materials provided in the TCPA Compliance Alert should not be construed as providing legal advice.

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