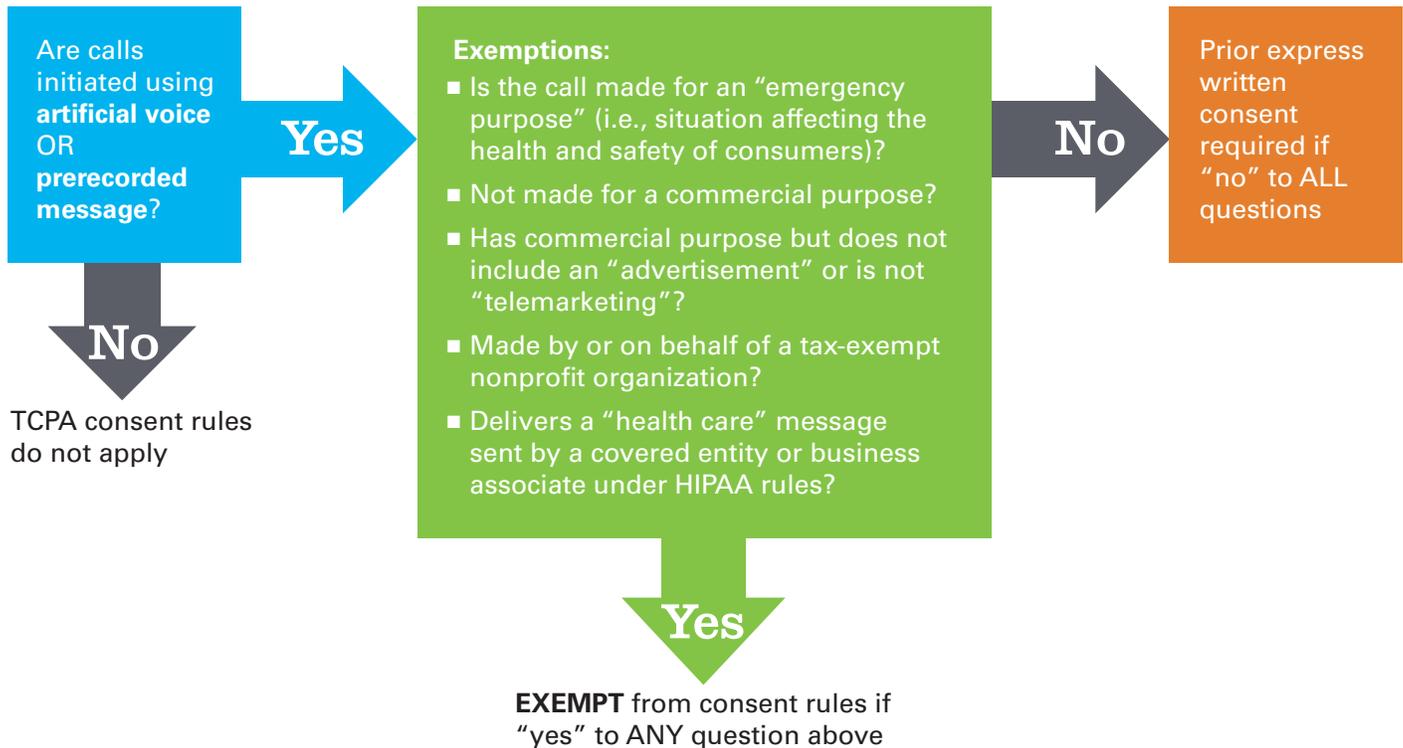
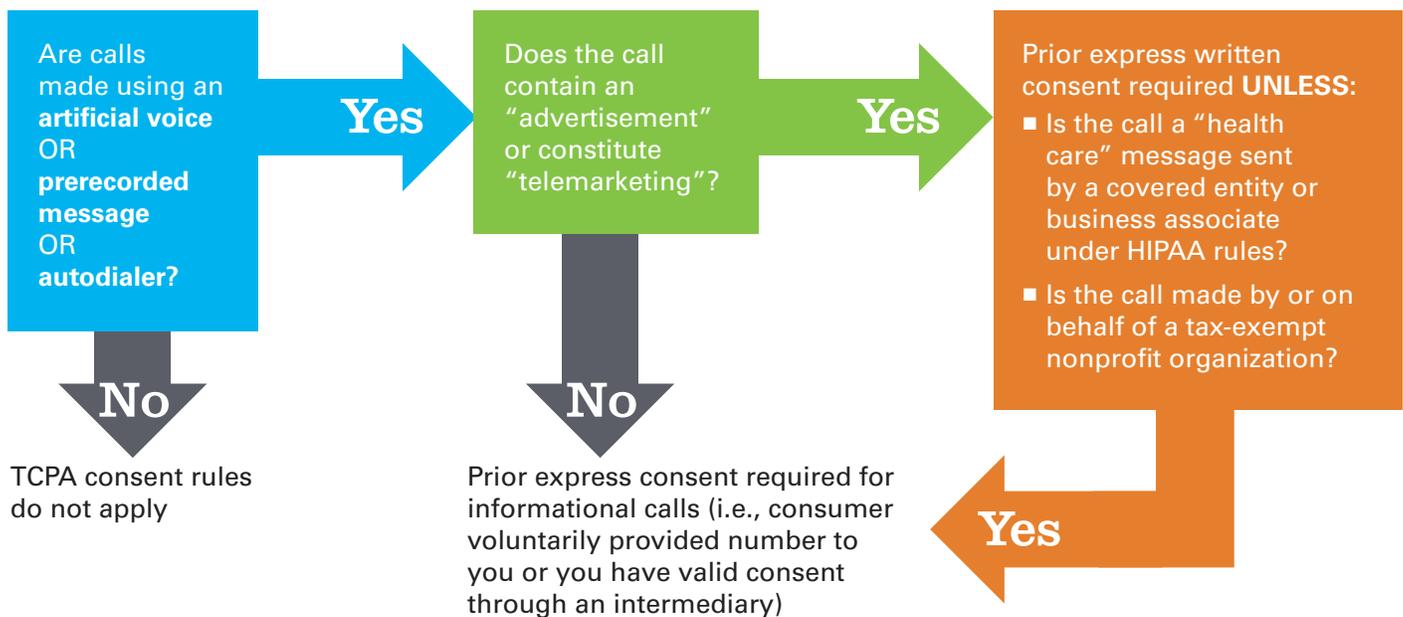


# TCPA Quick Reference Guide

## Residential Landline



## Mobile Phone



## Prior Express Written Consent – Marketing Calls/Texts

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- ✓ Identify each specific seller to whom consent is being provided
- ✓ Identify the consumer's phone number
- ✓ Indicate an affirmative agreement (i.e., I agree/consent)
- ✓ Clearly and conspicuously disclose that the consumer is authorizing the seller to engage in advertising or telemarketing
- ✓ Clearly and conspicuously disclose that the calls will be made using automated technology (i.e., artificial voices, prerecords, autodialers)
- ✓ Clearly and conspicuously disclose that the consumer is not required to provide consent as a condition of purchasing goods or services
- ✓ Obtain a written signature from the consumer (electronically through eSIGN is okay)

**Disclosures must be clear and conspicuous!**

## TCPA: Dos and Don'ts\*

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### DOs!

- **DO:** Know what the TCPA is and what it regulates:
  - The TCPA restricts outbound marketing calls using automatic telephone dialing systems ("autodialers") and artificial or prerecorded voice messages. This includes text messaging and faxing. It also restricts calls to phone numbers that are registered on a Do Not Call list.
  - The term autodialer is subject to hot debate, but generally means the capacity to dial numbers with little or no human intervention even if that capacity is not currently being used.
- **DO:** Know what marketing is under the TCPA and that it is defined very broadly.
  - **Marketing** under the TCPA includes calls that offer, market or promote products or services to consumers. If a call is made to induce the purchase of goods or services—then or in the future—it is a marketing call. Even calls that merely advertise the commercial availability or quality of any goods or services and do not induce a purchase are considered marketing. As a general rule, calls that are not purely informational in purpose and message constitute marketing for purposes of the TCPA.
- **DO:** Ensure you have proper consent when making automated marketing calls or texts:
  - See flow chart on previous page.
  - Note: The TCPA's consent provisions do not apply to autodialed calls made to *residential landlines*—only artificial voices or prerecorded voice messages apply to residential landlines.
- **DO:** Maintain written consent records for *at least* four years. TCPA claims can be brought against the company four years after a call is made. For example, if a call is made on November 30, 2019, a TCPA claim can be filed as late as November 30, 2023.
- **DO:** Promptly identify yourself as a representative of your company when an outbound call is answered or a text sent.
- **DO:** Promptly add individuals who express a desire not to be called or opt out of text messages to the company internal DNC list.

## TCPA: Dos and Don'ts\* (cont.)

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### DON'Ts!

- **DON'T:** Bury the disclosures required to obtain “prior express written consent.” Instead, make sure they are clear and conspicuous to the consumer.
- **DON'T:** Make marketing calls—whether automated or not—to telephone numbers on the National Do Not Call Registry unless the company qualifies for one of the following three exemptions:
  - **Transactional EBR:** the consumer has purchased or been billed for your company's products or services in the past eighteen (18) months.
  - **Inquiry EBR:** the consumer has inquired about or has submitted a full or partially completed application or inquiry for your company's products or services within the past three (3) months.
  - **Written Agreement:** Your company has a signed, written agreement from the consumer in which the consumer expressly agrees, in writing, to receive calls by or on behalf of your specific company and includes the phone number to which calls may be made and the consumer's signature. The signature may be electronic under the E-SIGN Act.
- **DON'T:** Make marketing calls—whether automated or not—to any phone number that is on your company's internal DNC list, unless your company subsequently obtains a signed, written agreement from that consumer. The consumer must expressly agree, in writing, to receive calls/texts by or on behalf of your specific company, and the agreement must include the phone number to which calls may be made as well as the consumer's signature. The signature may be electronic under the E-SIGN Act if the agreement is reached online.
- **DON'T:** Require any magic words for an internal DNC request. For example, “take me off your list” or “I want the calls to stop” should be treated as an internal DNC request.
- **DON'T:** Use caller identification blocking technology or spoofing technology to disguise the phone number used to call or text consumers.
- **DON'T:** Make marketing calls/texts outside of the hours of 8 a.m. – 9 p.m. in the time zone in which you are calling. Be aware that certain states may have more restrictive requirements.

\*This is intended to be a nonexhaustive, high-level reference guide and does not include state law requirements. If you have any questions about the information contained herein, please contact a member of our TCPA team.



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