

# The Mortgage Marketer's Guide to applying CASL:

## How to Leverage Canada's Newest Internet Law

As a Mortgage Marketer you need to be well informed about anything that can have an impact on the success of your campaigns. That is the reason VERICO Dynamics and VERICO have developed this guide that will help Mortgage Marketers develop more effective campaigns and therefore improve the experience of consumers of electronic messages.

This Guide concisely summarizes the details relevant for Mortgage Marketers about CASL – The Canadian Anti-Spam Legislation. But, this document takes one more critical step in helping Mortgage Marketers succeed: it provides actionable guidelines so that you can comply with the new law and use it to optimize your marketing campaign results.

In this Guide, you will find answers to the following questions:

- What is CASL?
- Do I need to comply?
- What do I need to do to comply with CASL?
- What are the penalties of not complying with CASL?
- What should I do now?

Finally, this Guide includes The **CASL Action Chart** which outlines the steps you can take to ensure that your marketing campaigns comply and optimize the new law. And, to provide you with a relevant basis of comparison, The **CASL Action Chart** also compares the new obligations to those under the CAN-SPA M Act of 2003 – which Mortgage Marketers worldwide have been applying to their campaigns.

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### What is CASL (Bill C-28)?

CASL, The Canadian Anti-Spam Legislation (Bill C-28) introduced by the Canadian government in May, 2010<sup>1</sup>, will establish important new requirements for anyone using electronic messaging for marketing in Canada.

CASL will apply to any form of electronic message sent for marketing purposes (referred to as a "Commercial Electronic Message", or "CEM"), including: email, SMS, instant messaging and social media/networking. CASL also addresses Internet marketing challenges such as malware, phishing, pharming and other Internet threats<sup>2</sup>.

## Do I Need to Comply?

Anyone sending a CEM (Commercial Electronic Message) from Canada or to someone in Canada is subject to CASL. Canadian and international organizations sending to Canadians are required to comply with the bill.

### What do I need to do to comply with CASL?

CASL requires consent before Mortgage Marketers can send a CEM. This is consistent with the long-established requirement for consent under the Personal Information Protection and Electronic Documents Act (PIPEDA )

This means that consent must be obtained before a CEM can be sent. There are also a number of circumstances under which consent may also be implied.

These include:

- (i) where the sender has an existing business or non business relationship with the recipient;
- (ii) (ii) where the recipient has published their electronic address in a prominent manner;
- (iii) (iii) or where the recipient has provided their email address directly to the sender<sup>3</sup>.

CASL also requires senders to identify themselves, to indicate on whose behalf the message is sent, to provide up-to-date contact information and to include a functional unsubscribe mechanism. These rules apply regardless of how many messages are sent (i.e. where a single message is sent).

### What are the penalties of not complying with CASL?

CASL establishes a civil regime with significant enforcement powers and penalties<sup>4</sup>. Administrative monetary penalties can be as high as \$1 million per violation for individuals, and \$10 million per violation for organizations. CASL also includes provisions for a private right of action that allows any person to seek damages in court resulting from a violation of the law. CASL enables the agencies responsible for enforcing the law -- the Canadian Radio-television and Telecommunications Commission, the Competition Bureau and the Office of the Privacy Commissioner of Canada -- to work with foreign counterparts in the enforcement of CASL and similar foreign legislation.

The good news for Mortgage Marketers is that these penalties and powers are specifically aimed at the most egregious offenders (i.e., spammers). Organizations that commit an honest mistake while otherwise making reasonable efforts to comply with the legislation have protections under the legislation. Most importantly, the 'due diligence' defence provides that a person should not be held liable for a violation where they can demonstrate that they have exercised due diligence to prevent the commission of the violation. This is a further incentive to ensure that your organization understands and complies with the requirements of CASL.

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## CASL Action Chart

Follow the guidelines described in the following CASL Action Chart to ensure that your marketing campaigns comply and optimize the new law.

### MORTGAGE MARKETER'S CORE ISSUE: WHAT MESSAGES ARE COVERED

#### CAN-SPAM

Only addresses email.

#### CASL Covers

- Unsolicited Email, SMS, Instant Messaging (IM)
- Spyware, Malware, Phishing, and Pharming
- Social Networks

#### How to optimize your campaigns while leveraging CASL

Establish a baseline policy for interacting with your subscribers across all technologies, something that will meet and/or exceed the requirements regardless of the medium.

### MORTGAGE MARKETER'S CORE ISSUE: WHO A MORTGAGE MARKETER CAN SEND EMAIL TO

#### To ensure your campaigns are compliant with CAN-SPAM

Mortgage Marketers can send commercial email to anyone. However, Mortgage Marketers cannot send commercial email to anyone who has "unsubscribed" or "opted-out" from commercial email.

#### To ensure your campaigns are compliant with CASL

Mortgage Marketers can send email to anyone who has given consent. Consent may also be implied in one of the following circumstances:

- 1) There is an existing business or non-business relationship between the sender and the recipient of the message\*;
- 2) The recipient has published their address in a conspicuous manner, and the message is related to the recipient's professional capacity;
- 3) The recipient has provided their electronic address directly to the sender, and the message is related to the recipient's professional capacity. Explicit consent exists when the recipient provides the sender permission to send messages.

\*Definitions of business relationships and non-business relationships can be found at the end of this document.

#### How to optimize your campaigns while leveraging CASL

Segment your subscribers (and targets) based on expressed preferences, observed behaviours, demographics and customer lifetime value.

Use opt-in consent methods for capturing contact information.

**MORTGAGE MARKETER'S CORE ISSUE: WHEN A MORTGAGE MARKETER CAN SEND EMAIL**

**To ensure your campaigns are compliant with CAN-SPAM**

Mortgage Marketers can send commercial email at anytime.

However, if an email recipient has unsubscribed, Mortgage Marketers must cease any commercial email within 10 days, and thereafter must receive an explicit request from an email recipient to re-subscribe before sending any more commercial emails to that recipient.

**To ensure your campaigns are compliant with CAN-SPAM**

Mortgage Marketers can send email only after consent is provided, or can be implied.

In most circumstances implied consent lasts for two years.

**How to optimize your campaigns while leveraging CASL**

Avoid seeking an "ideal" time & day to send email. Only send emails when you have relevant and timely content.

Use preference centers so that subscribers can choose the timing and frequency with which they receive emails.

If you are relying on implied consent, use this two-year window to gather explicit consent.

**MORTGAGE MARKETER'S CORE ISSUE: WHAT NEEDS TO BE IN ALL EMAIL MESSAGES**

**To ensure your campaigns are compliant with CAN-SPAM**

Mortgage Marketers need to include:

- Valid information in the Email header
- Company postal address
- Subject lines that accurately reflect the purpose of the email
- A functional unsubscribe mechanism

**CASL Covers**

Mortgage Marketers need to include:

- The identity of the person who is sending the email message. If the email is being sent on someone's behalf other than the sender, the name of that person needs to be included.
- Company name
- Company contact information
- Unsubscribe mechanism

**How to optimize your campaigns while leveraging CASL**

To increase the likelihood of email being delivered by the Internet Service Providers (ISP), ensure the Domain Naming System (DNS) and the Internet Protocols match the corporate brand sending the email.

Run tests (e.g. html coding, spam words, subject lines, spelling mistakes, text on graphics, etc.) on your content prior to deploying.

Include your postal address as one of the forms of contact information.

## MORTGAGE MARKETER'S CORE ISSUE: WHAT A MORTGAGE MARKETER NEEDS TO DO TO ACQUIRE NEW EMAIL SUBSCRIBERS

### To ensure your campaigns are compliant with CAN-SPAM

If consent has not been gathered, Mortgage Marketers need to include a notice stating that the email is an advertisement or commercial message.

Mortgage Marketers cannot use address harvesting or dictionary attacks to generate lists.

### To ensure your campaigns are compliant with CASL

While CASL does not outline any specific actions, it demands that Mortgage Marketers have consent (either express or implied) prior to sending an email.

Mortgage Marketers cannot use address harvesting or dictionary attacks to generate lists.

### How to optimize your campaigns while leveraging CASL

Follow the guidelines set out in the Personal Information Protection and Electronics Documents Act (PIPEDA ) and work with your email service provider to take advantage of online contests and offline marketing campaigns.

[http://www.priv.gc.ca/information/guide\\_e.cfm](http://www.priv.gc.ca/information/guide_e.cfm).

## MORTGAGE MARKETER'S CORE ISSUE: WHAT A MORTGAGE MARKETER NEEDS TO DO TO ACCOMMODATE RECIPIENTS WHO DON'T WANT TO RECEIVE THEIR EMAILS

### To ensure your campaigns are compliant with CAN-SPAM

Mortgage Marketers must maintain clear and conspicuous unsubscribe procedures within the email and honour requests for unsubscribing within 10 business days of the request.

Unsubscribe mechanisms must remain active for 30 days from the day the email was sent.

Unsubscribe mechanism must be simple and not require any additional information other than an email address and a preference to opt-out.

### CASL Covers

Mortgage Marketers must maintain clear and conspicuous unsubscribe procedures within the email and honor requests for unsubscribing without delay.

Mortgage Marketers must also provide a method for email recipients to easily contact the person(s) responsible for sending the message. This method must be active for 60 days from the day the email was sent.

### How to optimize your campaigns while leveraging CASL

Include an email address to unsubscribe and a web page for unsubscribing.

Use a preference centre to ensure that subscribers can opt-out, or opt-down, from individual publications rather than all of your publications.

Include 'unsubscribe from all' as an option.

Ask unsubscribers an optional question, "Why are you unsubscribing?" so that you can learn how to modify your campaigns based on this feedback.

Route unsubscribe reports to a customer service representative so that they can be reviewed rather than to an unattended mailbox.

## END NOTES

This Guide is provided for information purposes only, and is not intended as a substitute for qualified legal advice. VERICO makes no claims as to the absolute reliability and accuracy of any information presented herein, and accept no liability or responsibility for any errors or omissions.

1. Bill C-28 ([http://www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/h\\_gv00567.html](http://www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/h_gv00567.html)) was formerly Bill C-27, the Electronic Commerce Protection Act (ECPA ).

2. Please review “The Digital Economy in Canada” glossary for more details (<http://www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/gv00333.html>) or consult the authors of this Guide.

3. Both business and non-business relationship are defined at the end of this document. A message can only be sent under the latter two scenarios where the recipient has not expressly stated that they do not wish to receive unsolicited messages and where the message is related to the recipient’s professional capacity.

4. Violations of CASL are not criminal offences. Note: The Competition Act includes the ability to prosecute certain violations involving misleading and deceptive practices as either civil violations or criminal offences.

### Key Definitions

- You are considered to have had a business relationship when a customer has purchased/leased a product, good or service, bartered or entered a contract with you.
- You are considered to have had a non-business relationship when a person donates to, volunteers for, or becomes an official member of, your organization.