



Canada's Anti-Spam Legislation (CASL)

Member Compliance



Overview

❖ **Canada's Anti-Spam Legislation**

- Compliance
- Exemptions & Consent
- Risk Mitigation
- Resources
- Practical Takeaways
- Scenarios



Overview

- ◆ Enforcement
- ◆ Consequences
- ◆ Commercial Electronic Message (CEM)
 - Electronic
 - Email
 - Text
 - Direct Message
 - Commercial



COMPLIANCE

- ◆ Is the message a CEM?
- ◆ Is the CEM subject to CASL?
- ◆ Is there consent to send the CEM?
- ◆ Is the required information in the CEM?
- ◆ Is there an unsubscribe mechanism in the CEM?

Exemptions

- Emails between employees of two organizations that have a relationship
- Family or personal relationship
- Inquiry about products or services (and responses)
- Section 6(6) Emails
 - Providing a quote or estimate
 - Facilitating a commercial transaction previously agreed to

Consent

- **Implied**
 - Follow up on referral
 - Existing business relationship
 - Conspicuous publication of email address
- **Express**
 - Purpose
 - Identifying information
 - Withdraw of consent



RISK MITIGATION

- **CASL Compliance Program**
 - ✓ Compliance Officer
 - ✓ Risk Assessment
 - ✓ Policy
 - ✓ Training
 - ✓ Auditing/Monitoring

 - **Due Diligence Defence**
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Practical Takeaways

❖ Canada's Anti-Spam Legislation

- Consent is key
- Office CASL Compliance Program

❖ CREA Member Portal Resources (member.crea.ca)

❖ CRTC Resources

- [FAQ](#)
- **Bulletins**
 - [General Interpretation - 2012-548](#)
 - [Toggling - 2012-549](#)

Scenario 1

Brendan shares information about his brokerage's event by:

- Calling his entire contact list;
- Emailing his family members;
- Direct messaging a few people via social media ; and
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Scenario 2

Brendan sent every industry contact he made within the last 10 years the following email:

Hello,

You're invited to Best-Ever Brokerage's networking event to be held on April 30, 2024, at Hungry Restaurant. Bring business cards and your best elevator pitch, as there will be plenty of opportunity to make new business connections. See you there!

Brendan

Best-Ever Brokerage

10439 Main St.

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Scenario 3

Jessica creates a newsletter which provides information on statistics, trends, and market reports. She wants to distribute this newsletter directly to users who sign up via her website.

What factors should Jessica consider?


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Scenario 4


Jessica creates the following acknowledgment on her website:

 I agree to receive Jessica's newsletter containing news, statistics, market trends, and promotional and marketing materials.

Please refer to the [Privacy Policy](#) or [Contact Us](#) links for more details.

Scenario 4

Jessica creates the following acknowledgment on her website:

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Scenario 5

Jessica creates the following acknowledgment on her website:

Enter your email below to agree to receive Jessica's newsletter containing market trends, and promotional and marketing materials. You can withdraw your consent at any time.

Please refer to the [Privacy Policy](#) or [Contact Us](#) links for more details.



A screenshot of a web form. It features a light gray rectangular input field on the left containing the placeholder text "your email". To the right of the input field is a teal-colored button with the word "Submit" written in white text.

Scenario 5

Jessica creates the following acknowledgment on her website:

Enter your email below to agree to receive Jessica's newsletter containing market trends, and promotional and marketing materials.

You can withdraw your consent at any time.

Please refer to the [Privacy Policy](#) or [Contact Us](#) links for more details.



A form consisting of a text input field on the left and a green submit button on the right. The text input field contains the placeholder text "your email". The submit button contains the text "Submit".


Scenario 6

Jessica creates the following acknowledgment on her website:

I agree to the website's terms of use, privacy policy, and to receive Jessica's newsletter containing news, statistics, market trends, and promotional and marketing materials.

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The CRTC has explicitly stated that the mere use of buttons available on social media websites – such as clicking “like”, voting for or against a link or post, accepting someone as a “Friend”, or clicking “Follow” – will generally be insufficient to constitute a personal relationship.

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No. However, see Section 5.1 of the *Guidance on CASL for REALTOR® Members* for strategies on obtaining consent to express contact to contact consumers. See also the question below.

Question 3

Can I modify my open house forms to request express consent to send commercial emails?

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Yes. This is discussed on the *Guidance on CASL for REALTOR® Members* guideline that CREA has produced and is available on REALTOR Link®. Template language that could be inserted on the open house form is included on Section 3.2.2 of the guidance.

Question 4

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No. REALTOR® members do not have an automatic right to send unsolicited commercial emails to other REALTOR® members. However, CASL does contain various provisions that may allow REALTOR® members to send their commercial emails to other REALTOR® members in specific circumstances without asking for prior express consent. For example, if a REALTOR® member has posted his/her email address on their website and hasn't stated they don't wish to receive unsolicited emails, they can be sent a commercial email provided the email relates to their business or official capacity. For more information about situations where an exemption or implied consent may exist consult the *Guidance on CASL for REALTOR® Members* guideline, which is available on REALTOR Link®. Note that some Boards and Associations have created systems that facilitate such member-to-member emailing. REALTOR® members should contact their Board or Association to find out more about such systems.

Thank you!

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