



# **ESSENTIAL GUIDE TO GAINING & PROVING CONSENT FOR TCPA COMPLIANCE**

**If** you're a marketer who relies on buying leads to fill your funnel, you know there are a lot of challenges associated with that. Those challenges range from integrating partners, filtering out unqualified leads, verifying and documenting consent for TCPA compliance, tracking performance, and ongoing optimization.

However, the TCPA compliance challenge could be the biggest because if you don't do it properly, it could literally put your company out of business. The last thing you want is to buy a lead who turns out to be someone who sues your company. This is happening on a regular basis to both large and small businesses.

But not all lawsuits are large, class-action ones. There are lots of smaller lawsuits filed by individuals. Some of these are what we refer to as serial litigators. There are people out there who file lots of lawsuits claiming TCPA violations and usually settle out of court for amounts from loosely \$10,000 to \$250,000. One of the most prevalent serial TCPA litigators out there is Craig Cunningham. To date, he has filed about 86 TCPA violation lawsuits. And it's not just Craig, there are others just like him just waiting to get an opportunity to sue.

To give you an idea of just how much a lawsuit can cost a company, here are a few settled cases:



**\$76m**

**CARIBBEAN CRUISE LINE**

2016 - Made marketing robocalls without prior written consent.



**\$600k**

**POWERHOUSE GYM**

2019 - Sent marketing texts without obtaining prior written consent.



**\$1.2m**

**HD SUPPLY**

2018 - Sent marketing text messages without obtaining prior written consent.



**\$28m**

**ALARM.COM**

2019 - Made telemarketing calls using automatic telephone system and pre-recorded messages without prior written consent.

# Adhering to the TCPA

One of the tenets of the TCPA is getting prior express written consent before calling the consumer. This seems like it's a complex thing to do so a lot of marketers pursue elaborate strategies to comply with the TCPA without getting documented consent.

**They are focused on strategies like:**

- + Calling consumers on a phone system that is not an autodialer.
- + Only calling residential lines and not mobile numbers when using an autodialer.
- + Avoiding the use of pre-recorded messages.
- + Avoiding the use of SMS technologies.

These types of things can get complicated and they waste a lot of time and money. Plus, contacting consumers who did not consent doesn't produce the best results. It's much easier to just get the consent.

When you have express written consent, you get to use all the latest and greatest technologies like autodialers, you can send text messages, you can use pre-recorded messages. All these tools make your marketing ops very efficient.

And because prior express written consent also supersedes the Do Not Call list (DNC), you don't have to worry about the DNC! The biggest benefit of all is contacting people who want to be contacted. Your conversion rates will improve!

**Getting express written consent is powerful. Think of it as your golden ticket!**



### Proper Legal Language

By checking this box, I agree to receive auto marketing messages.

### Clear & Conspicuous Language

\* If a Derived Program: provided that you also do one of the Standard or Modified Versions as included in the Licensed

### Opt-in Mechanism



## How to Outsmart TCPA Litigators: Prove Consent

It's a good idea to get the advice of an attorney when creating consent language on your web forms.

A lot of litigators assume you're not going to have documented consent. They think it will be easy to sue and get a settlement. If you want to outsmart the TCPA litigators, there are a few things you need to do. You need to properly collect consent, document that consent and have a way to quickly access the documentation.

Again, you can be doing everything by the book in terms of getting consent before contacting a consumer. But unless you can prove the consent was given, you are still vulnerable.

Let's take a look at both collecting and documenting consent the proper way to help minimize your risk of penalties.

### Collecting consent

- There must be proper, legal language presented to the consumer.
- The language must be clear and conspicuous, not legalese and not hidden.
- Must have an opt-in mechanism for people to express affirmative action.

### Documenting Consent

The main focus here is to prove you are collecting consent properly. You'll have to prove each requirement listed under collecting consent, above. Remember, it's not what you know, it's what you can prove.

You could be in a situation where someone fills out a form and 3 years later, a case is brought against you. You'll need to be able to easily find and share the documentation of that person's consent to prevail.

What will you send to a litigator to prove consent?

**Burden of proof is on the caller.**

**How would you provide proof of consent?**

## Consent Documentation Depends on the Channel

There are three ways you can document consent. We'll look at each of the three: *written contract*, *consent via phone* and *web forms*.

### Consent via Written Contract

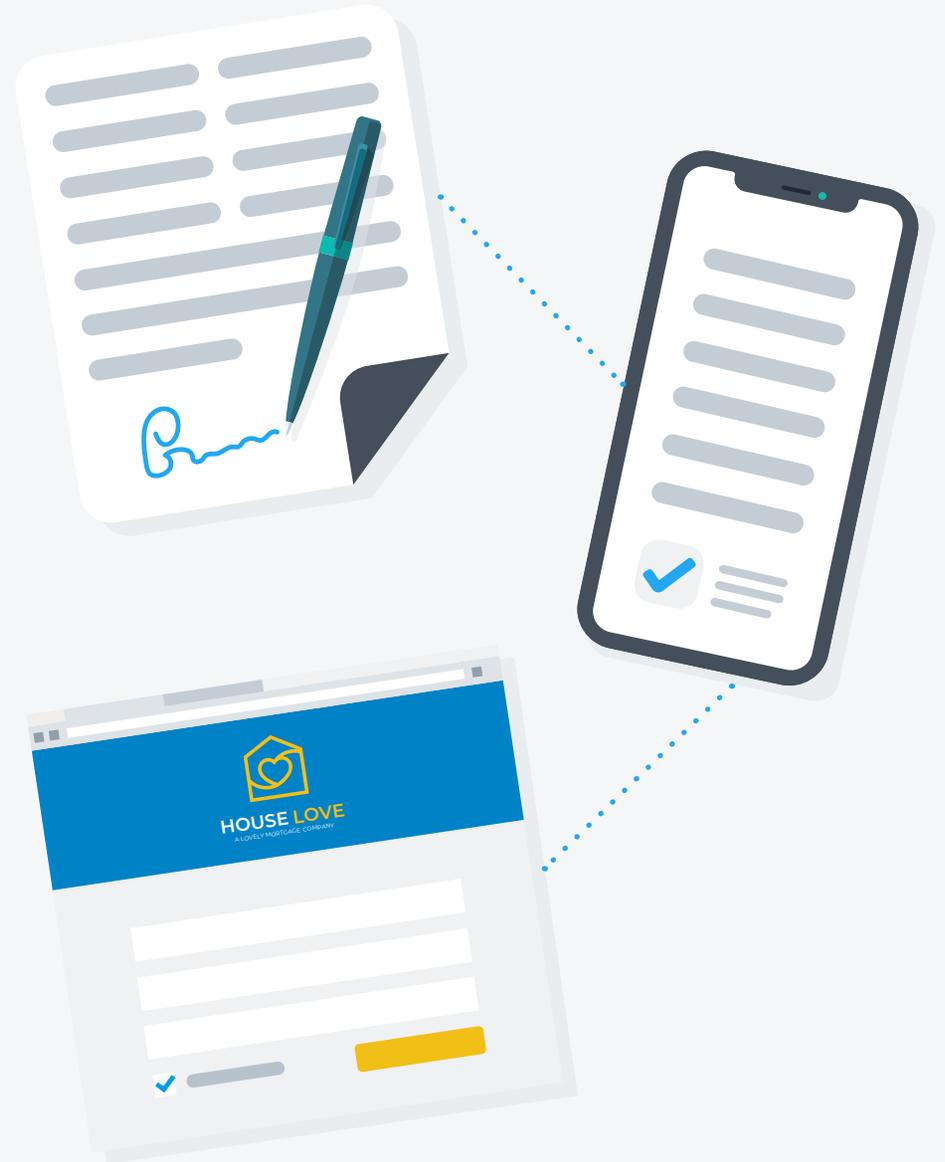
A written contract is rare for a marketer have but, they do exist. This is typically a situation where you have an existing business relationship with a customer and you are marketing other services to them. If you have a written contract, you'll need to keep the contract for the length of time that your legal council has requested. Whether it's in a paper format or electronic form, the key here is being able to find it and share if necessary.

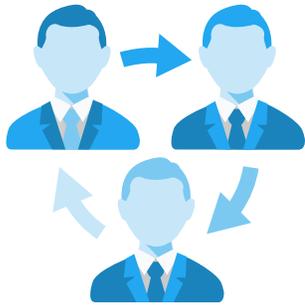
### Consent via Phone

This is becoming a more popular channel for consent. If this is something you're thinking of doing, you'll need a call recording. There are some great tools to be able to do this that will also help store and locate the recordings. Make sure you abide by applicable laws regarding consent to record. If you don't get explicit consent, the recording is invalid.

### Consent via Web Forms - Most Popular

Web forms are by far the most popular channel by which to collect consent. They are easy and scalable. However, using web forms do come with several challenges.





## Challenge 1

A lot of marketers get leads from a 3rd party. If you are doing this, you are buying these opt-in leads from someone else who controls the form. A lot of times, you don't even know where those forms are displayed or if the proper consent language is presented.



## Challenge 2

Many websites are dynamic, which means customers may have different experiences on the same web page. Some companies will rely on obtaining the URL where a customer signs up as proof of consent. But with dynamic content, that doesn't hold up. The URL doesn't prove anything. Also, these lead-generating sites change constantly. How do you prove consent for content that was displayed three years ago?



## Challenge 3

How do you know that the consumer opt-ed in? How do you know they checked the box or clicked the submit button? The answer is you normally don't.

These challenges are a major reason why TCPA litigation is exploding. It's really hard to prove consent.

**This is why we created TrustedForm.**

## Certificate of Authenticity

Certificate ID: fe3ha8096b95244f9ac943847c0756d5738eb3



This certificate was issued by TrustedForm.com from ActiveProspect, the independent internet lead certification authority. It certifies the following information about this lead:

### When did they visit?

Visit Date	January 19th, 2017
Visit Time	8:34:08 PM CST
Time on page	2 minutes, 43 seconds

### Where did they visit?

Page URL	https://www.activeprospect.com/89430wjfdskafjdu9304udsajklfjdsi
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### Who visited?

Remote IP Address	172.88.223.7
Geographic Location (Approximate)	Austin, TX, United States
Browse	Chrome 51.78.343
Operating System	Windows

### What did they see?

TrustedForm captures a copy of the webpage as the consumer saw it. We call this the Snapshot. The Snapshot is a copy of the full HTML and images of the page that is stored on our server. This allows you to interact with the page as it existed at the time the consumer completed the form.

[VIEW VIDEO REPLAY](#)

## TrustedForm - The Easy Way to Prove Consent

TrustedForm is a lead certification service that documents consent for each individual lead. We're able to independently verify where and when consumers sign up using a web form. This is accomplished through capturing the events on a form and providing an instant video replay showing the exact actions the consumers take on the form.

1. **See the exact website where form was filled**
2. **See all events that takes place on the page**
3. **See a video replay of the consumer filling out the form**

### How Does TrustedForm Work?

Our script is placed on the form and the script issues a unique certificate for every lead submitted on that form. The certificate is in the form of a URL. You capture the TrustedForm Certificate URL as an additional field with the rest of the data like first name, last name, email etc.

The certificate is claimed by making a call to our API. This call tells us to save the certificate, which can be stored indefinitely. It's up to you. You can also verify the consent language that was on the form before you call...all in real time!

### Want to see TrustedForm in Action?

See the [instant demo](#) now.

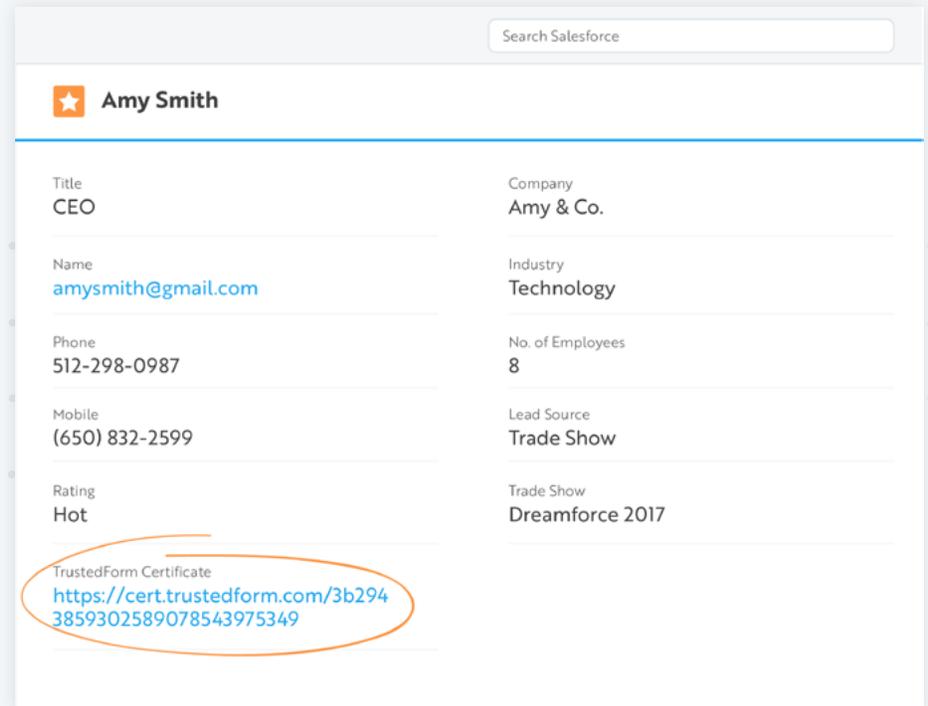
## Verify consumer consent in real time before you call!

The certificate URL is captured and stored with the rest of the lead data in your existing database. For example, if you use Salesforce and someone attempts to claim a TCPA violation occurred, you can look them up in your Salesforce account and click on the TrustedForm Certificate URL associated with that lead. This will take you to the TrustedForm Certificate that shows the video replay of that person's experience on your web form.

Wow! This is why attorneys know that when a company uses TrustedForm, it makes it so much harder to win a lawsuit.

**“TrustedForm is the best product available to ensure compliance with the TCPA.”**

Ahmad Sulaiman - Managing Partner, Atlas Consumer Law



Search Salesforce

**Amy Smith**

Title CEO	Company Amy & Co.
Name <a href="mailto:amysmith@gmail.com">amysmith@gmail.com</a>	Industry Technology
Phone 512-298-0987	No. of Employees 8
Mobile (650) 832-2599	Lead Source Trade Show
Rating Hot	Trade Show Dreamforce 2017
TrustedForm Certificate <a href="https://cert.trustedform.com/3b2943859302589078543975349">https://cert.trustedform.com/3b2943859302589078543975349</a>	

## Protect Yourself Even More

If you want to add to your level of protection, there are a few other services to help:



### Right Party Verification

Does the phone number belong to the consumer?



### Litigator Scrub

Is this person a known TCPA litigator?



### Fraud Detection

Was the lead submitted by fraudulent site visitors such as bots or scammers?

# Gaining Consent for TCPA Checklist

Please review any TCPA disclosure statements with your legal department to make sure that the statement follows your company's legal and compliance requirements.

## COLLECTION

- The disclosure language is clear and easy to understand, no legalese.
- The disclosure statement is clearly visible in the immediate vicinity of the opt-in button.
- The disclosure statement states the identity of the company that will contact the consumer.
- The disclosure statement states that communication may be in the form of an SMS (text) or automatic dialing system (ATDS).
- If you're pre-recording the call, this is clearly stated in the disclosure.
- The disclosure states that opting in is not a requirement to take advantage of the offer.
- The disclosure provides an estimate regarding the amount of calls that will take place.

## DOCUMENTATION

- Proof the consumer gave consent by checking the box or completing the form.
- Visual record of what TCPA disclosure language that was viewed by the consumer.
- Data about the visitor who completed the form (IP address, Browser, Operating System, etc.).
- Data about when and where the form was completed (Timestamp and page URL).
- Documentation should be collected and stored by an independent third party so that it can't be manipulated.
- Documentation should be easily accessible and shareable.



For more information, visit us at  
**ActiveProspect.com**