

CALIFORNIA CONSUMER PRIVACY ACT (PART 2)

What is the California Consumer Privacy Act (CCPA)?

The CCPA is a law that went into effect on January 1, 2020 that gives California consumers various rights in their personal private information that certain companies collect and use in the course of business. Responsibilities for Covered and not Covered Businesses are different. Definitions for Covered and Not Covered Businesses and requirements for Covered Businesses are explained in CALIFORNIA CONSUMER PRIVACY ACT (Part 1).

If my business is not a Covered Business under the CCPA, are there any obligations that still apply?

Yes, even entities that are not Covered Businesses may have limited compliance obligations if they sell CCPA-protected personal information. If a Not Covered-CCPA entity receives consumer personal information from a CCPA Covered Business, then wishes to share that personal information further, the non-CCPA entity must provide explicit notice to the consumer, before sharing the information further, (i) of the sharing itself, and (ii) of the right of the consumer to opt-out of the data sharing of its personal information by a CCPA Covered Business. It is the responsibility of the consumer, not the Not-Covered entity, to contact the CCPA Covered Business.

To help address this issue, C.A.R. has issued standard form CCPA – California Consumer Privacy Act Advisory, which brokers and salespeople should use to comply with their third-party notice obligations under CCPA, and when required by their local MLS's rules.

If my business is a Covered Business, what information do I need to determine how to comply with the law?

To properly respect the rights granted by CCPA, you need to understand what type and how your business handles consumer personal information that it collects. Broadly, you need to be able to answer these questions:

1. Where does my business' data come from, and what data does my business collect? (For example, what comes directly from clients, what comes from the MLS, what comes from public records, and from what other sources does my business collect data?)
2. What does my business use the data for internally?
3. Where does my business' data go externally? (What third parties does your business share data with and for what purpose?)

Are there penalties for failure to comply with CCPA?

1. A business that violates any of the CCPA provisions can be punished by the Attorney General with civil fines up to \$2,500 per violation, or up to \$7,500 per violation for intentional violations.
2. There is no private right of action except for data breaches of nonencrypted or nonredacted information, which can carry statutory damages of \$100 to \$750 per consumer per incident.

Practice Tip:

Covered Businesses can avoid penalties by assuring that private information covered in communications with clients is encrypted or redacted. Even though most individual real estate salespersons and small brokers are Not-Covered entities under the CCPA, they nonetheless owe a fiduciary duty to their clients. These Not-Covered entities can protect themselves from claims by also taking steps to assure that private information covered in communications with clients is encrypted or redacted.