

California Consumer Privacy Act (PART 2)

What is the California Consumer Privacy Act (CCPA)?

The CCPA is a law that initially went into effect in January 2020 and was subsequently amended. The CCPA 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 non-Covered Businesses are different. Definitions for Covered and non-Covered Businesses and certain 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 non-Covered Businesses may have limited compliance obligations if they sell or share personal information. If a non-Covered Business receives consumer personal information from a Covered Business, then wishes to share that personal information further, the non-Covered Business 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 sharing of personal information by a Covered Business. It is the responsibility of the consumer, not the non-Covered entity, to contact the Covered Business.

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 the 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 the CCPA?

1. A business that violates any of the CCPA provisions can be punished by the California Privacy Protection Agency with administrative fines up to \$2,500 per violation, or up to \$7,500 per violation for intentional violations involving minors.
2. The Attorney General can pursue legal action and/or negotiate settlements for violation of the CCPA.
3. There is a limited private right of action for data breaches of nonencrypted or nonredacted information, which can carry statutory damages of \$100 to \$750 per consumer per incident.

Practice Tips:

- C.A.R. has issued standard form CCPA – California Consumer Privacy Act Advisory, which brokers and salespeople should use to (i) provide consumers with general information about potentially applicable data privacy law and (ii) satisfy notice requirements set forth in the model MLS rules.
- Covered Businesses can potentially minimize penalties by ensuring that personal information covered in communications with clients is encrypted or redacted. Even though many real estate salespersons and small brokers are non-Covered entities under the CCPA, they nonetheless owe a fiduciary duty to their clients. These non-Covered entities can protect themselves from claims by also taking steps to ensure that personal information covered in communications with clients is encrypted or redacted.