

The California Consumer Privacy Act



C.A.R.
LEGAL
TOOLS



What is it?

- Gives California consumers rights in their personal private information that certain companies collect and use in the course of business
- Effective January 1, 2020

What Does CCPA Protect?

- Personal information--defined as any data that could reasonably be associated or linked with a household or consumer
- Broadly include names, addresses, email addresses, social security numbers, bank details, employment details, IP addresses, purchasing history, and any inferences drawn from other information to create a consumer profile





What Type of Records Does CCPA Protect?

CCPA does not distinguish between electronic records and other forms of records, so even paper files fall under CCPA protection.



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Who Does CCPA Protect?

Any natural person
who resides in California

CCPA

Who must comply with the CCPA?

For-profit legal entity, including a sole proprietorship who:

Does business
in California

Collects personal
information, directly or
through others
(such as a salesperson
on behalf of a broker)

Determines what to do
with the information and
how it is used

Compliance required only if the entity meets ONE of the following:

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- Has \$25 million or more in annual revenue
- Derives at least half its revenue from the sale of consumer personal information
- Annually buys, sells, or otherwise shares personal information of 50,000 or more consumers, households or devices

What does a covered business have to do?

- Give consumers a notice
- Respond to a consumer
- Allow consumer the right to opt-out
- Delete the consumer's personal information upon request EXCEPT if legally obligated to maintain
 - Brokers are obligated to maintain records for 3 years
 - MLS is statutorily required to keep listing for 3 years



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Obligations for Non-covered businesses under CCPA

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- Must still provide consumer a notice that information is shared
- Must provide consumer notice of right to opt-out from a Covered Business. A non-covered business does not have to contact the covered business on behalf of the consumer
- CAR form CCPA satisfies this notice obligation



CALIFORNIA
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CALIFORNIA CONSUMER PRIVACY ACT ADVISORY
(C.A.R. Form CCPA, 12/19)

As of January 1, 2020, the California Consumer Privacy Act (commencing with Civil Code § 1798.100) ("CCPA") grants to California residents certain rights in their private, personal information that is collected by companies with whom they do business. Under the CCPA, "personal information" is defined broadly to encompass non-public records information that could reasonably be linked directly or indirectly to you, including, potentially, photographs of or sales information about your property. Some of your personal information will be collected and likely shared with others during the process of buying and selling real estate. Depending on the situation, you may have the right to "opt out" or stop the transfer of your personal information to others and request that certain businesses delete your personal information altogether. Not all businesses you interact with are required to comply with the law, primarily just those who meet the criteria of a covered "Business" as set forth in Section 1798.140 (c)]. For more information, you may ask your Broker for a copy of the C.A.R. Legal Q&A on the subject.

A real estate broker is likely to submit personal information to a Multiple Listing Service ("MLS") in order to help find a buyer for a seller's property. Through the MLS, the information is made available to real estate brokers and salespeople, and others. Even after a sale is complete, the MLS distributes sales information to the real estate community. Brokers, agents and MLSs may also share your personal information with others who post the personal information on websites or elsewhere, or otherwise use it. Thus, there are various service providers and companies in a real estate transaction who may be engaged in using or sharing data involving your personal information.

If your broker is a covered Business, it should have a privacy policy explaining your rights on its website and giving you an opportunity to request that personal information not be shared, used and even deleted. Even if your real estate brokerage is a covered Business, it needs, and is allowed, to keep your information to effectuate a sale and, by law, is required to maintain such information for three years to comply with regulatory requirements. Not all brokers are covered Businesses, however, and those that are not, do not have to comply with the CCPA.

Similarly, most MLSs will not be considered a covered Business. Instead, the MLS may be considered a Third Party in the event a covered Business (ex: brokerages, real estate listing aggregation or advertising internet sites or other outlets who meet the criteria of covered Businesses) exchanges personal information with the MLS. You do not have the right under the CCPA to require a Third Party to delete your personal information. And like real estate brokerages, even if an MLS is a covered Business, MLSs are also required by law to retain and make accessible in its computer system any and all listing and other information for three years.

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What are penalties for non-compliance?

- Civil Fines up to \$2,500, and up to \$7,500 for intentional violations
- Potential exposure for \$100 to \$750 per consumer incident if data breach of non-encrypted information

Additional Resources

Legal Q&A – The California Consumer Privacy Act

<https://www.car.org/riskmanagement/qa/broker-practice-folder/CCPA>

Quick Guide #1 – California Consumer Privacy Act (Part 1)

<https://bit.ly/2RosTrD>

Quick Guide #2 – California Consumer Privacy Act (Part 2)

<https://bit.ly/2RJDFrx>