

CALIFORNIA CONSUMER PRIVACY ACT (PART 1)

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 entities that are Covered and not Covered Businesses (defined below) are different. Obligations of Not Covered Businesses and penalties for non-compliance are explained in CALIFORNIA CONSUMER PRIVACY ACT (Part 2).

What does CCPA protect?

The law protects the “personal information” of any natural person who resides in California. Personal information is defined as any data that could reasonably be associated or linked with a household or consumer. This could 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. CCPA does not distinguish between electronic records and other forms of records, so even paper files fall under CCPA protection.

Who must comply with the CCPA?

CCPA applies to any “Covered Business” if ONE of the following apply:

1. The business has \$25 million or more in annual revenues;
2. The business derives half or more of its revenues from the sale of consumer personal information; or
3. The business annually buys, sells, or otherwise shares for commercial purposes, the personal information of 50,000 or more consumers, households or devices.

A Covered Business is:

- a for-profit legal entity (including sole proprietorships);
- that does business in the state of California;
- that collects a person’s personal information either directly or through another (such as a salesperson collecting consumer information on behalf of their broker); and
- determines the purpose and means of processing the information (does not merely passively collect personal information but affirmatively chooses what to collect and how to use it).

What does the law require a Covered Business to do?

- **Pre-collection Notice:** Before a business collects a consumer’s personal information, it must give the consumer notice of the categories of personal information to be collected and the purposes for which the consumer’s personal information will be used.
- **Right to Notice:** Respond to a consumer, at no charge and within 45 days, with the categories of personal information collected, the specific personal information about the consumer collected, and the third parties to whom the business has sold or shared the consumer’s personal information.
 - The business typically must provide at least two methods for a consumer to request such a report, including at minimum a toll-free telephone number and, if the business has a website, a website address.
- **Right to Deletion:** The business must delete personal information it possesses relating to that consumer after a consumer request.
 - This right is not absolute; CCPA lists various reasons a business may refuse the consumer’s deletion request, including completion of the transaction for which the personal information was collected, or to comply with other legal obligations such as a real estate licensee’s obligation to maintain records for three years.
- **Right to Opt-Out:** If the business sells a consumer’s personal information, it must provide a clear and conspicuous link on its website titled “Do Not Sell My Personal Information” that links to a page where the consumer may opt-out.

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.