The California Consumer Privacy Act

Commonly Asked Questions

FOREWORD

This commonly asked questions document ("FAQ") is designed to provide members of the California Land Title Association ("CLTA") readily accessible material for referencing aspects of the California Consumer Privacy Act ("CCPA") as chaptered into law within the California Civil Code. Its use is not required by the CLTA, nor has the FAQ been approved by the California Attorney General’s office. This FAQ is solely for the use of CLTA members for informational purposes only and cannot be used by anyone for any other purpose whatsoever without express written permission from CLTA.

The FAQ contains highlights of the various provisions of the CCPA, including business obligations and consumer rights. This FAQ is nothing more than a guide and thus, cannot anticipate all possible situations nor provide irrevocable rules for dealing with questions which may arise. The FAQ is not a textbook and is not intended to be relied upon as a statement or interpretation of the law by the CLTA members, their employees or any other persons. The FAQ is not intended to express the views of any specific business practices nor the opinions of the California Attorney General, the CLTA and the CLTA employees.

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All CLTA members are strongly encouraged to seek legal counsel for their interpretation of the CCPA when it comes to establishing business practices and compliance with the CCPA.

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Table of Contents

I. What is the CCPA and who does it affect?

1. What is the “CCPA” and where is the act located in California law?
2. When does the CCPA go into effect?
3. What businesses are subject to the CCPA?
4. How are the terms “consumer” and “household” defined in the CCPA?
5. How does the CCPA define a “business”?
6. Are businesses outside of California subject to the CCPA?

II. Collection and sale of personal information

7. What activities does the CCPA cover?
8. How is “personal information” defined in the CCPA?
9. How is “publicly available information” defined in the CCPA?
10. How is “deidentified” and “aggregate” consumer information defined?
11. How is the term “collection” defined in the CCPA?
12. What are the obligations for a business under the CCPA associated with collection of a consumer’s personal information?
13. How is a “sale” of consumer data defined in the CCPA?
14. Are there any additional requirements under the CCPA specifically for businesses that sell consumers’ personal information?
15. Can a business offer financial incentives to consumers for the collection, sale, or deletion of personal information?
16. Does the CCPA require businesses to retain a consumer’s personal information for a certain amount of time?

III. Consumer privacy rights

17. What are the consumer rights found within the CCPA?
18. What is the Right to Opt-out?
19. Are there any exemptions to the right to opt-out?
20. What is the Right to Opt-in?
21. Is a business able to alter the services or goods they provide to consumers that have exercised their rights under the CCPA?
22. Can a consumer request that a business delete their personal information?
23. Does a business always have to comply with a consumer deletion request?

IV. Disclosures and consumer requests

24. What must a business subject to CCPA disclose to a consumer?
25. What disclosures must a business subject to CCPA make at or prior to the point of collection?
26. What disclosures must a business subject to CCPA make upon receipt of a verifiable consumer request?
27. What is a “verifiable consumer request”?
28. Is there a standard method for how businesses must allow verifiable consumer requests to be submitted?
29. How long does a business have to respond to a verifiable consumer request?
30. Is there a specific format that a business’s response to a verifiable consumer request must take?
31. Are there specific steps that a business must take when responding to verifiable consumer requests?
32. Can a business otherwise use the information collected in connection with the business’s verification of a consumer request?
33. What if my business determines that a consumer request is not “reasonably verifiable”?
34. Are there any other instances in which a business is not required to respond to a verifiable consumer request?
35. Upon receipt of a verifiable consumer request, how does a business disclose to a consumer the categories and specific pieces of personal information the business has collected about that consumer?

V. Third parties and business-to-business interactions

36. How is “business purpose” defined in the CCPA?
37. What is the definition of a “service provider” under the CCPA?
38. Is a business held liable for the actions of a third party with which it may share information?
39. What is the definition of “commercial purposes” under the CCPA?
40. What is the definition of a “third party” under the CCPA?
41. What are the obligations of a “third party” under the CCPA?

VI. Exemptions

42. Are there any exemptions from the CCPA?
43. Does the CCPA apply to a consumer’s personal information that is collected prior to the law’s effective date?

VII. Regulations and enforcement actions

44. Who is responsible for enforcing the CCPA?
45. Is a business subject to enforcement actions by the Attorney General under the CCPA prior to the passage of Regulations?
46. Are any state agencies providing guidance on the CCPA?
47. What is the Attorney General’s enforcement authority under the CCPA?
48. How does the CCPA define what is commonly referred to as a data breach?
49. What are the repercussions to a business under the CCPA in the event of a data breach?
I. What is the CCPA and who does it affect?

1. What is the “CCPA” and where is the act located in California law?

   Ans. The CCPA is the California Consumer Privacy Act passed in 2018 as AB 375 (Chau) and, subsequently, SB 1121 (Dodd). The act can be found in Civil Code Sections 1798.100 – 1798.199.

2. When does the CCPA go into effect?

   Ans. The CCPA goes into effect on January 1, 2020. (Civil Code Section 1798.198)

   However, it is important to note that while the law goes into effect on January 1, 2020, it has a “look back” provision relating to data collected by a business in the preceding twelve months. (Civil Code Section 1798.130)

   In addition, the California Attorney General is required to adopt implementing regulations on or before July 1, 2020. The Attorney General is not to bring enforcement actions under the CCPA until six months after the publication of regulations or July 1, 2020, whichever is sooner. (Civil Code Section 1798.185)

3. What businesses are subject to the CCPA?

   Ans. A business, as defined, must satisfy one or more of the following thresholds in order to meet the applicability standard of the CCPA:

   A. Earns annual gross revenues in excess of $25,000,000 (NOTE: The revenue requirement is not limited to revenues earned in California);
B. Buys, receives for commercial purposes, sells, or shares for commercial purposes, the **personal information of 50,000 or more consumers, households, or devices per year**; or

C. **Derives 50 percent or more of its annual revenues from selling consumers’ personal information.**  

(Civil Code Section 1798.140(c))

**Note:** Under the CCPA, “device” is defined as “any physical object that is capable of connecting to the Internet, directly or indirectly, or to another device.”

(Civil Code Section 1798.140(jj))

4. **How are the terms “consumer” and “household” defined in the CCPA?**

Ans. As described in Question #3, one of the three thresholds for applicability of CCPA is that a business must buy, receive for commercial purposes, sell, or share for commercial purposes, the personal information of 50,000 or more consumers, households, or devices per year. The CCPA defines the terms “consumer” and “household” as follows:

A. Under the CCPA, “consumer” is defined as “a natural person who is a California resident, as defined in Section 17014 of Title 18 of the California Code of Regulations . . ., however identified, including by any unique identifier.”

(Civil Code Section 1798.140(g))

The term “resident” as used in the definition of “consumer” under the CCPA is defined as“(1) every individual who is in the State for other than a temporary or transitory purpose, and (2) every individual who is domiciled in the State who is outside the State for a temporary or transitory purpose. All other individuals are nonresidents.”

(Cal. Code Regs. Title 18, § 17014)
B. The term “household”, which is used in the definitions for “aggregate consumer information”, “business”, and “personal information”, is not explicitly defined within the CCPA.

(Civil Code 1798.140(a), 1798.140(c), 1798.140(o))

5. How does the CCPA define a “business”?

Ans. The CCPA broadly defines a business as any for-profit entity that meets at least one of the thresholds listed in Q3, and does business in California and that collects consumers’ personal information, or that determines the purposes and means of the processing of consumers’ personal information if consumers’ personal information is collected on behalf of the business.

(Civil Code Section 1798.140(c))

A. In addition, the CCPA also considers as a “business” any entity that controls or is controlled by a business, and that shares common branding with the business.

1. “Control” or “controlled” means ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a business; control in any manner over the election of a majority of the directors, or of individuals exercising similar functions; or the power to exercise a controlling influence over the management of a company.

(Civil Code Section 1798.140(c)(2))

2. “Common branding” means a shared name, servicemark, or trademark.

(Civil Code Section 1798.140(c)(2))

6. Are businesses outside of California subject to the CCPA?

Ans. A business based outside of California that is a for-profit entity that collects California consumers’ personal information, as defined by the CCPA, or determines the purposes and means of processing that personal information, does business in the State of California, and meets any one of the thresholds described in 3. “What businesses are subject to CCPA?” may be subject to CCPA.
II. Collection and sale of personal information

7. What activities does the CCPA cover?

Ans. The CCPA covers the collection, sale, deletion, and disclosure of a consumer’s personal information by a business.


8. How is “personal information” defined in the CCPA?

Ans. Under the CCPA, “personal information” is defined as “information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.”

“Personal information” does NOT include “publicly available information.”

(See 9. “How is ‘publicly available information’ defined in the CCPA?”)

Note: Because the CCPA defines “household” data as personal information, that data may arguably be protected under the CCPA even if it does not relate to a single individual.

(Civil Code Section 1798.140(o))

A. However, 1798.140(g)(1)(A) provides that personal information, as defined within the subdivision and collected in the course of a natural person acting as, among other things, a job applicant to, employee, or contractor of, a business, shall not fall under the purview of the CCPA:
1798.140 (g)(1)(A) Personal information that is collected by a business about a natural person in the course of the natural person acting as a job applicant to, an employee of, owner of, director of, officer of, medical staff member of, or contractor of that business to the extent that the natural person’s personal information is collected and used by the business solely within the context of the natural person’s role or former role as a job applicant to, an employee of, owner of, director of, officer of, medical staff member of, or a contractor of that business.

(Civil Code Section 1798.140(g))

NOTE: As of November 4, 2019, the legislation enacting 1798.140(g)(1)(A), AB 25 (Chau), contains a sunset clause that states that the subdivision shall become inoperative on January 1, 2021.

(Civil Code Section 1798.140(g)(4))

B. Furthermore, Civil Code Section 1798.145(l) provides, among other things, that personal information, as defined within the subdivision and collected from a consumer during the course of that consumer acting on behalf of, among other things, a company or government agency during business-to-business interactions, shall not fall under the purview of the CCPA:

1798.145 (l) (1) The obligations imposed on businesses by Sections 1798.100, 1798.105, 1798.110, 1798.115, 1798.130, and 1798.135 shall not apply to personal information reflecting a written or verbal communication or a transaction between the business and the consumer, where the consumer is a natural person who is acting as an employee, owner, director, officer, or contractor of a company, partnership, sole proprietorship, nonprofit, or government agency and whose communications or transaction with the business occur solely within the context of the business conducting due diligence regarding, or providing or receiving a product or service to or from such company, partnership, sole proprietorship, nonprofit or government agency.

(Civil Code Section 1798.145(l))

NOTE: As of November 4, 2019, the legislation enacting 1798.145(l), AB 1355 (Chau), contains a sunset clause that states that the subdivision shall become inoperative on January 1, 2021.
9. How is “publicly available information” defined in the CCPA?

Ans. Under the CCPA, “publicly available” means information that is lawfully made available from federal, state, or local government records.

(Civil Code Section 1798.140(o)(2))

10. How is “deidentified” and “aggregate” consumer information defined?

Ans. The CCPA defines aggregate consumer information as “information that relates to a group or category of consumers, from which individual consumer identities have been removed, that is not linked or reasonably linkable to any consumer or household, including via a device.”

(Civil Code Section 1798.140(a))

The CCPA defines deidentified data as data that cannot be linked to a particular consumer. The act also requires businesses that use deidentified data implement technical safeguards and business processes that prohibit reidentification or inadvertent release of deidentified information. Businesses are prohibited from reidentifying the data.

(Civil Code Section 1798.140(h))

Consumer information that is deidentified or aggregate consumer information is not considered to be “personal information” under the CCPA.

(Civil Code Section 1798.140(o)(2))

11. How is the term “collection” defined in the CCPA?

Ans. The CCPA defines collection as “buying, renting, gathering, obtaining, receiving, or accessing any personal information pertaining to a consumer by any means.”

(Civil Code Section 1798.140(e))
This rather expansive definition of “collection” arguably encompasses information a business actively collects as well as information that a business passively receives from other parties, including directly from a consumer.

**Note:** While the CCPA does not require a business to retain a consumer’s personal information when collected in association with a “one-time transaction” in order to respond to certain verifiable consumer requests, such personal information must not be sold or retained by the business, or be used to reidentify or link the consumer’s data in a manner that would be considered personal information.

(See 42. “Are there any exemptions from the CCPA?”, Civil Code Section 1798.100(e), and 1798.110(d)(1))

12. **What are the obligations for a business under the CCPA associated with collection of a consumer’s personal information?**

**Ans.** Businesses subject to CCPA must comply with several key obligations, summarized here. Each obligation is explained in greater detail elsewhere in this document:

A. Provide privacy notices and disclosures to consumers, in the form of both a privacy policy and disclosures at or prior to the point of collection of a consumer’s personal information.
B. Provide consumers with the opportunity to submit verifiable consumer requests related to the sale and use of their information.
C. Provide consumers with the right to submit verifiable consumer requests related to deletion of their information, subject to specified exceptions.
D. Provide consumers with the opportunity to request, subject to specified exceptions, that a business not sell their personal information.
E. Take reasonable security precautions in the handling of consumers’ personal information and assume liability in the event of a data breach where such precautions are not taken.
F. Provide children under 16 years old with the “right to opt-in” to the sale of their personal information.
G. Offer equal services and prices by not discriminating against a consumer because the consumer exercised any of their consumer rights under the CCPA.
13. **How is a “sale” of consumer data defined in the CCPA?**

   **Ans.** The CCPA defines a “sale” to include “selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer’s personal information by the business to another business or a third party for monetary or other valuable consideration.”

   *(Civil Code Section 1798.140(t)(1))*

   **Note:** The term “valuable consideration” is likely to be interpreted to include more than purely monetary consideration, so companies would be wise to scrutinize the applicability of the CCPA to all arrangements for data disclosures.

14. **Are there any additional requirements under the CCPA specifically for businesses that sell consumers’ personal information?**

   **Ans.** Yes. A business that sells personal information about the consumer to third parties must also:

   A. Provide a clear and conspicuous link on the business’s Internet homepage, titled “Do Not Sell My Personal Information,” to an Internet Web page that enables a consumer, or a person authorized by the consumer, to opt-out of the sale of the consumer’s personal information. A business shall not require a consumer to create an account in order to direct the business not to sell the consumer’s personal information.

   B. Include a description of a consumer’s rights pursuant to Section 1798.120, along with a separate link to the “Do Not Sell My Personal Information” Internet Web page in:

      1. Its online privacy policy or policies if the business has an online privacy policy or policies.


      3. If the business maintains a separate and additional homepage that is dedicated to California consumers and that includes the required links and text, and the business takes reasonable steps to ensure that California consumers are directed to the homepage for California consumers, a
business is not required to comply with the CCPA by including the required links and text on a homepage that the business makes available to the public generally.

C. Ensure that all individuals responsible for handling consumer inquiries about the business’s privacy practices or the business’s compliance with this title are informed of all requirements in Civil Code Section 1798.120 and 1798.135 and how to direct consumers to exercise their rights under those sections.

D. Refrain from selling personal information collected by the business about the consumer.

E. Wait at least 12 months before requesting that a consumer who has opted-out of the sale of the consumer’s personal information again authorize the sale of the consumer’s personal information.

F. Use any personal information collected from the consumer in connection with the submission of the consumer’s opt-out request solely for the purposes of complying with the opt-out request.

(Civil Code Section 1798.135)

15. Can a business offer financial incentives to consumers for the collection, sale, or deletion of personal information?

Ans. A business may offer financial incentives, including payments to consumers as compensation, for the collection of personal information, the sale of personal information, or the deletion of personal information, provided that the incentive practices are not unjust, unreasonable, coercive, or usurious in nature. A business may also offer a different price, rate, level, or quality of goods or services to the consumer if that price or difference is directly related to the value provided to the consumer by the consumer’s data.

(Civil Code Section 1798.125(b)(1)-(4))

Note: A business that offers any financial incentives shall notify consumers of the financial incentives pursuant to Civil Code Section 1798.135.

(Civil Code Section 1798.125(b)(2))
**Note:** A Consumer must give the business prior opt-in consent prior to being enrolled in a financial incentive program. The consumer may revoke their consent at any time.

(Civil Code Section 1798.125(b)(3))

16. **Does the CCPA require businesses to retain a consumer’s personal information for a certain amount of time?**

Ans. While the CCPA does not explicitly mandate a retention period for consumers’ personal information for purposes of the act, a business’s disclosure in response to certain verifiable consumer requests are required to cover the **12-month period preceding** the business’s receipt of the verifiable consumer request.

(See 26. “What disclosures must a business subject to CCPA make upon receipt of a verifiable consumer request?” and Civil Code Section 1798.130(a)(2)).

Furthermore, the CCPA does not require a business to “collect personal information that it would not otherwise collect in the ordinary course of its business,” or “retain personal information for longer than it would otherwise retain such information in the ordinary course of its business.”

(Proposed Civil Code Section 1798.145(i))

**Note:** A **“one-time transaction”** does not require a business to retain a consumer’s personal information that it collects in order to respond to certain verifiable consumer requests **if the personal information collected by the business during that one-time transaction is not sold or retained by the business or to reidentify or link the consumer’s personal data in a manner that would be considered personal information.**

(See 42. “Are there any exemptions from the CCPA?” and Civil Code Section 1798.110(d)(1))
III. Consumer privacy rights

17. What are the consumer rights found within the CCPA?

Ans. The consumer rights within the CCPA are as follows:

   A. The right to know what personal information will be collected at or prior to the point of collection and, the right to receive subsequent notification before a business collects additional categories or collects personal information for new purposes.

   (Civil Code Section 1798.100)

   B. The right to know what personal information a business has collected about them, as well as what personal information has been sold or otherwise disclosed about them.

   The types of personal information a customer has the right to know include:

   1. The categories of personal information a business has collected about that consumer.

   2. The categories of sources of information from which the personal information is acquired.

   3. The business or commercial purpose for collecting or selling personal information.

   4. The categories of third parties with whom the personal information is shared.

   5. The specific pieces of personal information it has collected about that consumer.

   If a business sells personal information or discloses it for business purposes, consumers also have the right to request the categories of personal information that the business sold about the consumer and the categories of third parties to whom the personal information was sold, and the categories of personal information that the business disclosed about the consumer for a business purpose.
(Civil Code Sections 1798.110, 1798.115, 1798.130)

C. The **right to request the deletion** of personal information.

**Note:** There are exemptions from a consumer’s right to delete.

(See 22. “Can a consumer request that a business delete their personal information?” and Civil Code Section 1798.105)

D. The **right to prohibit the sale of personal information (also known as the right to “opt-out”)**.

**Note:** There are exemptions from a consumer’s right to opt-out.

(See 18. “What is the Right to Opt-out?” and Civil Code Section 1798.120(a))

E. The **right to opt-in** to the sale of personal information for children under the age of 16.

(See 20. “What is the Right to Opt-in?” and Civil Code Section 1798.120(c))

F. The **right to equal services and prices**. Under the CCPA, a business shall not discriminate against a consumer because the consumer exercised any of their consumer rights by denying goods or services, charging a different price or rate for goods or services, providing a different level or quality of goods or services, or suggesting that they will do any of these things based upon a consumer’s exercise of any CCPA rights.

(See 21. “Is a business able to alter the services or goods they provide to consumers that have exercised their rights under the CCPA?” and Civil Code Section 1798.125(a))

G. **Enforcement by the Attorney General of the State of California.** Civil penalties provided for under the CCPA shall be exclusively assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General.

(See 44. “Who is responsible for enforcing the CCPA?” and Civil Code Section 1798.155)
H. **Private right of action** in the event of a data breach of a consumer’s nonencrypted, nonredacted personal information.

(See 48. “How does the CCPA define what is commonly referred to as a data breach?” and [Civil Code Section 1798.150](#))

18. **What is the Right to Opt-out?**

**Ans.** A consumer shall have the right, at any time, to direct a business that sells personal information about the consumer to third parties not to sell the consumer’s personal information. This right is referred to as the right to opt-out.

([Civil Code Section 1798.120(a)](#))

**Note:** There are exemptions from a consumer’s right to opt-out. See 42. “Are there any exemptions from the CCPA?”

A consumer may authorize another person solely to opt-out of the sale of the consumer’s personal information on the consumer’s behalf. A business shall comply with an opt-out request received from a person authorized by the consumer to act on the consumer’s behalf, pursuant to regulations adopted by the Attorney General.

([Civil Code Section 1798.135(c)](#))

A business that has received direction from a consumer not to sell the consumer’s personal information shall be prohibited, pursuant to paragraph (4) of subdivision (a) of Section 1798.135, from selling the consumer’s personal information after its receipt of the consumer’s direction, unless the consumer subsequently provides express authorization for the sale of the consumer’s personal information.

([Civil Code Section 1798.120(d)](#))

19. **Are there any exemptions to the right to opt-out?**

**Ans.** See 42. “Are there any exemptions from the CCPA?” and [Civil Code Section 1798.145](#).
20. **What is the Right to Opt-in?**

Ans. A business shall not sell the personal information of consumers if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, in the case of consumers between 13 and 16 years of age, or the consumer’s parent or guardian, in the case of consumers who are less than 13 years of age, has affirmatively authorized the sale of the consumer’s personal information. A business that willfully disregards the consumer’s age shall be deemed to have had actual knowledge of the consumer’s age.

(Civil Code Section 1798.120(c))

A business that has not received consent to sell the minor consumer’s personal information shall be prohibited, pursuant to paragraph (4) of subdivision (a) of Section 1798.135, from selling the consumer’s personal information.

(Civil Code Section 1798.120(d))

21. **Is a business able to alter the services or goods they provide to consumers that have exercised their rights under the CCPA?**

Ans. A business can charge a consumer that has exercised their rights under the CCPA a different price or rate, or provide a different level or quality of goods or services to the consumer, if that difference is reasonably related to the value provided to the business by the consumer’s data.

(Civil Code Section 1798.125(a)(2))

**Note:** Otherwise, the law dictates that a business shall not discriminate against a consumer because the consumer exercised any of the consumer’s rights under the CCPA, including, but not limited to, by:

A. Denying goods or services to the consumer.

B. Charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties.

C. Providing a different level or quality of goods or services to the consumer.
D. Suggesting that the consumer will receive a different price or rate for goods or services or a different level or quality of goods or services.

(Civil Code Section 1798.125(a)(1))

22. Can a consumer request that a business delete their personal information?

Ans. Yes, a consumer can submit a “verifiable consumer request” to a business requesting that their personal information be deleted. With certain exceptions as described below, upon receipt of a verifiable consumer request, a business shall delete the consumer’s personal information from its records and direct any service providers (see 37. “What is the definition of a ‘service provider’ under the CCPA?”) to delete the consumer’s personal information from their records.

(Civil Code Section 1798.105)

23. Does a business always have to comply with a consumer deletion request?

A business is not required to comply with a verifiable consumer request to delete the consumer’s personal information if it is necessary for the business or service provider to maintain the consumer’s personal information in order to:

A. Complete the transaction for which the personal information was collected, provide a good or service requested by the consumer, or reasonably anticipated within the context of a business’s ongoing business relationship with the consumer, or otherwise perform a contract between the business and the consumer.

B. Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity.

C. Debug to identify and repair errors that impair existing intended functionality.

D. Exercise free speech, ensure the right of another consumer to exercise his or her right of free speech, or exercise another right provided for by law.

E. Comply with the California Electronic Communications Privacy Act pursuant to Chapter 3.6 (commencing with Section 1546) of Title 12 of Part 2 of the Penal Code.
F. Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws, when the businesses’ deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.

G. To enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer’s relationship with the business.

H. Comply with a legal obligation.

I. Otherwise use the consumer’s personal information, internally, in a lawful manner that is compatible with the context in which the consumer provided the information.

(Civil Code Section 1798.145(a))

IV. Disclosures and consumer requests

24. What must a business subject to CCPA disclose to a consumer?

Ans. There are several different disclosures that a business subject to CCPA must provide, depending on whether or not the business sells a consumer’s personal information or discloses a consumer’s personal information for a business purpose:

A. Disclosures required at or prior to the point of collection:

1. For all businesses subject to CCPA

(Civil Code Sections 1798.105(b) and 1798.130(a)(5))

2. For businesses subject to CCPA that sell personal information about a consumer, or that disclose a consumer’s personal information for a business purpose

(Civil Code Sections 1798.115(c), 1798.120(b), and 1798.130(a)(5))

B. Disclosures required upon receipt of a verifiable consumer request:
1. For all businesses subject to CCPA
   (Civil Code Sections 1798.100(a) and 1798.110(b))

2. For businesses subject to CCPA that sell personal information about a consumer, or that disclose a consumer’s personal information for a business purpose
   (Civil Code Sections 1798.115(a) and 1798.130(a)(4))

25. What disclosures must a business subject to CCPA make at or prior to the point of collection?

   A. Disclosures required for all businesses subject to CCPA at or prior to the point of collection:

   1. Pursuant to Section 1798.130, the consumer’s rights to request the deletion by the business of the consumer’s personal information.
      (Civil Code Section 1798.105(b))

   2. A business must disclose the following information in its online privacy policy or policies if the business has an online privacy policy or policies and in any California-specific description of consumers’ privacy rights, or if the business does not maintain those policies, on its Internet Web site, and update that information at least once every 12 months:

      a. A description of a consumer’s rights pursuant to Sections 1798.110, 1798.115, and 1798.125 and one or more designated methods for submitting requests.

      b. For purposes of subdivision (c) of Section 1798.110, a list of the categories of personal information it has collected about consumers in the preceding 12 months by reference to the enumerated category or categories in subdivision (c) that most closely describe the personal information collected.

      c. For purposes of paragraphs (1) and (2) of subdivision (c) of Section 1798.115, two separate lists:

         i. (i) A list of the categories of personal information it has sold about consumers in the preceding 12 months by reference to the enumerated category or categories in subdivision (c) that most closely describe the personal information sold, or if the business has not sold consumers’
personal information in the preceding 12 months, the business shall disclose that fact.

ii. (ii) A list of the categories of personal information it has disclosed about consumers for a business purpose in the preceding 12 months by reference to the enumerated category in subdivision (c) that most closely describe the personal information disclosed, or if the business has not disclosed consumers’ personal information for a business purpose in the preceding 12 months, the business shall disclose that fact.

(Civil Code Section 1798.130(a)(5))

B. Disclosures required for businesses subject to CCPA that sell personal information about a consumer, or that disclose a consumer’s personal information for a business purpose at or prior to the point of collection:

1. The category or categories of consumers’ personal information it has sold, or if the business has not sold consumers’ personal information, it shall disclose that fact.

2. The category or categories of consumers’ personal information it has disclosed for a business purpose, or if the business has not disclosed the consumers’ personal information for a business purpose, it shall disclose that fact.

(Civil Code Sections 1798.115(c) and 1798.130(a)(5))

3. A business that sells consumers’ personal information to third parties shall provide notice to consumers, pursuant to subdivision (a) of Section 1798.135, that this information may be sold and that consumers have the “right to opt-out” of the sale of their personal information.

(Civil Code Section 1798.120(b))

C. Disclosures required for businesses subject to CCPA that offer any financial incentives for the collection, sale, or deletion of personal information:

1. A disclosure notifying consumers of the financial incentives pursuant to Section 1798.135.

(Civil Code Section 1798.125(b)(2))
26. **What disclosures must a business subject to CCPA make upon receipt of a verifiable consumer request?**

**B. Disclosures required upon receipt of the corresponding verifiable consumer request for all businesses subject to CCPA:**

1. The categories and *specific pieces of personal information the business has collected* about a consumer.

   *(Civil Code Section 1798.100)*

2. The category or *categories of personal information collected* about the consumer in the *preceding 12 months* as follows:

   a. The *categories of personal information* it has collected about that consumer.

   b. The *categories of sources* from which the personal information is collected.

   c. The *business or commercial purpose for collecting or selling personal information*.

   d. The *categories of third parties with whom the business shares personal information*.

   e. The *specific pieces of personal information it has collected* about that consumer.

   *(Civil Code Section 1798.110)*

**C. Disclosures required upon receipt of the corresponding verifiable consumer request for businesses subject to CCPA that sell personal information about a consumer, or that disclose a consumer’s personal information for a business purpose:**

1. The categories of personal information that the business collected about the consumer within the preceding 12 months.

2. The categories of personal information that the business sold about the consumer and the categories of third parties to whom the personal information was sold, by
category or categories of personal information for each third party to whom the personal information was sold within the preceding 12 months.

3. The categories of personal information that the business disclosed about the consumer for a business purpose within the preceding 12 months.

(Civil Code Sections 1798.115(a) and Section 1798.130(a)(4))

27. What is a “verifiable consumer request”?

Ans. A “verifiable consumer request” is:

A. Made by a consumer, by a consumer on behalf of the consumer’s minor child, or by a natural person or a person registered with the Secretary of State that is authorized by the consumer to act on the consumer’s behalf.

B. Reasonably verifiable by the business to be the consumer about whom the business has collected personal information pursuant to regulations adopted by the Attorney General pursuant to paragraph (7) of subdivision (a) of Section 1798.185.

(Civil Code Section 1798.140(y)).

28. Is there a standard method for how businesses must allow verifiable consumer requests to be submitted?

Ans. A business must, in a form that is reasonably accessible to consumers, make available to consumers two or more designated methods for submitting requests for information required to be disclosed, including, at a minimum, a toll-free telephone number. A business that operates exclusively online and has a direct relationship with a consumer from whom it collects personal information shall only be required to provide an email address for submitting requests.

If a business maintains an internet website, the business must make the internet website available to consumers to submit requests for information.

(Civil Code Section 1798.130(a)(1))

A business must also ensure that all individuals responsible for handling consumer inquiries about the business’s privacy practices or the business’s compliance with
the CCPA are informed of all requirements in Civil Code Sections 1798.110, 1798.115, 1798.125, 1798.130, and how to direct consumers to exercise their rights under those sections.

(Civil Code Section 1798.130(a)(6))

A business that sells personal information about the consumer to third parties must also ensure that all individuals responsible for handling consumer inquiries about the business’s privacy practices or the business’s compliance with this title are informed of all requirements in Section 1798.120 and this section and how to direct consumers to exercise their rights under those sections.

(Civil Code Section 1798.135(a)(3))

29. **How long does a business have to respond to a verifiable consumer request?**

   **Ans.** A business must respond, free of charge, to a consumer within 45 days of receiving a verifiable consumer request. The time period to provide the required information may be extended once by an additional 45 days when reasonably necessary, provided the consumer is provided notice of the extension within the first 45-day period.

   (Civil Code Section 1798.130(a)(2))

   A time period for a business to respond to any verified consumer request may be extended by up to 90 additional days where necessary, taking into account the complexity and number of the requests. The business shall inform the consumer of any such extension within 45 days of receipt of the request, together with the reasons for the delay.

   (Civil Code Section 1798.145(g)(1))

30. **Is there a specific format that a business’s response to a verifiable consumer request must take?**

   **Ans.** A business’s disclosure in response to a verifiable consumer request shall be made in writing and delivered through the consumer’s account with the business, if the consumer maintains an account with the business, or by mail or electronically at the consumer’s option if the consumer does not maintain an account with the business,
in a *readily useable format that allows the consumer to transmit this information from one entity to another entity without hindrance.*

A business *cannot require the consumer to create an account with the business* in order to make a verifiable consumer request.

*(Civil Code Section 1798.130(a)(2)).*

31. **Are there specific steps that a business must take when responding to verifiable consumer requests?**

Ans. Yes, businesses must adhere to specific requirements in the law when responding to verifiable consumer requests. The specific requirements for each type of response are described as follows:

A. **Pursuant to Civil Code Section 1798.110(a):**

In the case of a verifiable consumer request for the following:

1. The **categories of personal information** it has collected about that consumer.

2. The **categories of sources** from which the personal information is collected.

3. The **business or commercial purpose** for collecting or selling personal information.

4. The **categories of third parties with whom the business shares personal information.**

5. The **specific pieces of personal information it has collected** about that consumer.

The business is to *identify the consumer* and *associate the information provided* by the consumer in the verifiable consumer request to any personal information previously collected by the business about the consumer.

Then, the business must identify by category or categories the personal information collected about the consumer in the *preceding 12 months* by reference to the enumerated category or categories that most closely describes the personal information collected.
(Civil Code Section 1798.110(a))

B. Selling of Information Pursuant to Civil Code Section 1798.115(b):

When selling consumers’ personal information, or disclosing consumers’ personal information for a business purpose, and responding to a consumer request for the following:

1. **The category or categories of consumers’ personal information it has sold**, or if the business has not sold consumers’ personal information, it shall disclose that fact.

   (Civil Code Section 1798.115(c)(1))

2. **The category or categories of consumers’ personal information it has disclosed for a business purpose**, or if the business has not disclosed the consumers’ personal information for a business purpose, it shall disclose that fact.

   (Civil Code Section 1798.115(c)(2))

The business must identify the consumer and associate the information provided by the consumer in the verifiable consumer request to any personal information previously collected by the business about the consumer.

The business must then identify by category or categories the personal information of the consumer that the business sold in the preceding 12 months by reference to the enumerated category that most closely describes the personal information, and provide the categories of third parties to whom the consumer’s personal information was sold in the preceding 12 months by reference to the enumerated category or categories that most closely describes the personal information sold. **The business must disclose this information in a separate list.**

The business must also identify by category or categories the personal information of the consumer that the business disclosed for a business purpose in the preceding 12 months by reference to the enumerated category or categories that most closely describes the personal information, and provide the categories of third parties to whom the consumer’s personal information was sold.
disclosed for a business purpose in the preceding 12 months by reference to the enumerated category or categories that most closely describes the personal information disclosed. *The business shall disclose this information in a separate list.*

(Civil Code Section 1798.115(b) / 1798.130(a)(4)(A)-(C))

32. **Can a business otherwise use the information collected in connection with the business’s verification of a consumer request?**

   Ans. No, the CCPA provides that any personal information collected from the consumer in connection with the business’s verification of the consumer’s request must be used solely for the purposes of verification.

   (Civil Code Section 1798.130(7))

33. **What if my business determines that a consumer request is not “reasonably verifiable”?**

   Ans. A business is not obligated to provide information to the consumer pursuant to Civil Code Sections 1798.110 and 1798.115 if the business cannot verify, pursuant to Civil Code Section 1798.140(y) and regulations adopted by the Attorney General pursuant to paragraph (7) of subdivision (a) of Section 1798.185, that the consumer making the request is the consumer about whom the business has collected information or is a person authorized by the consumer to act on such consumer’s behalf.

   (Civil Code Section 1798.140(y)).

   If the business does not take action on the request of the consumer, the business shall inform the consumer, without delay and at the latest within the time period permitted of response by this section, of the reasons for not taking action and any rights the consumer may have to appeal the decision to the business.

   (Civil Code Section 1798.145(g)(2))

34. **Are there any other instances in which a business is not required to respond to a verifiable consumer request?**

   Ans. If requests from a consumer are manifestly unfounded or excessive, in particular because of their repetitive character, a business may either charge a reasonable fee,
taking into account the administrative costs of providing the information or communication or taking the action requested, or refuse to act on the request and notify the consumer of the reason for refusing the request. The business shall bear the burden of demonstrating that any verified consumer request is manifestly unfounded or excessive.

(Civil Code Section 1798.145(g)(3))

35. **Upon receipt of a verifiable consumer request, how does a business disclose to a consumer the categories and specific pieces of personal information the business has collected about that consumer?**

Ans. A business that receives a verifiable consumer request from a consumer to access personal information shall promptly take steps to disclose and deliver, free of charge to the consumer, the personal information required by Civil Code Section 1798.100. The information may be delivered by mail or electronically, and if provided electronically, the information shall be in a portable and, to the extent technically feasible, in a readily useable format that allows the consumer to transmit this information to another entity without hindrance.

A business may provide personal information to a consumer at any time, but shall not be required to provide personal information to a consumer in response to a verifiable consumer request submitted pursuant to Civil Code Section 1798.100 more than twice in a 12-month period.

(Civil Code Section 1798.100(d))

V. **Third parties and business-to-business interactions**

36. **How is “business purpose” defined in the CCPA?**

Ans. The CCPA defines “business purpose” as the use of personal information for the business’s or a service provider’s operational purposes, or other notified purposes, provided that the use of personal information shall be reasonably necessary and proportionate to achieve the operational purpose for which the personal information was collected or processed or for another operational purpose that is compatible with the context in which the personal information was collected.

A. **Business purposes are:**
1. Auditing related to a current interaction with the consumer and concurrent transactions, including, but not limited to, counting ad impressions to unique visitors, verifying positioning and quality of ad impressions, and auditing compliance with this specification and other standards.

2. Detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity, and prosecuting those responsible for that activity.

3. Debugging to identify and repair errors that impair existing intended functionality.

4. Short-term, transient use, provided the personal information that is not disclosed to another third party and is not used to build a profile about a consumer or otherwise alter an individual consumer’s experience outside the current interaction, including, but not limited to, the contextual customization of ads shown as part of the same interaction.

5. Performing services on behalf of the business or service provider, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing financing, providing advertising or marketing services, providing analytic services, or providing similar services on behalf of the business or service provider.

6. Undertaking internal research for technological development and demonstration.

7. Undertaking activities to verify or maintain the quality or safety of a service or device that is owned, manufactured, manufactured for, or controlled by the business, and to improve, upgrade, or enhance the service or device that is owned, manufactured, manufactured for, or controlled by the business.

(Civil Code Section 1798.140(d))
37. What is the definition of a “service provider” under the CCPA?

Ans. “Service provider” means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that processes information on behalf of a business and to which the business discloses a consumer’s personal information for a business purpose pursuant to a written contract, provided that the contract prohibits the entity receiving the information from retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract for the business, or as otherwise permitted by this title, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract with the business.

(Civil Code Section 1798.140(v))

38. Is a business held liable for the actions of a third party with which it may share information?

Ans. A third party that violates any of the restrictions set forth in the CCPA shall be liable for the violations. A business that discloses personal information to a third party in compliance with the CCPA shall not be liable under the CCPA if the third party receiving the personal information uses it in violation of the restrictions established by the CCPA, provided that, at the time of disclosing the personal information, the business does not have actual knowledge, or reason to believe, that the third party intends to commit such a violation.

(Civil Code Section 1798.140(w)(2)(B))

39. What is the definition of “commercial purposes” under the CCPA?

Ans. The CCPA defines “commercial purposes” as to advance a person’s commercial or economic interests, such as by inducing another person to buy, rent, lease, join, subscribe to, provide, or exchange products, goods, property, information, or services, or enabling or effecting, directly or indirectly, a commercial transaction.

“Commercial purposes” do not include for the purpose of engaging in speech that state or federal courts have recognized as noncommercial speech, including political speech and journalism.
40. **What is the definition of a “third party” under the CCPA?**

**Ans.** The definition of “third party” is defined in the negative within the CCPA.

Under the law, a third party is *NOT* one of the following:

A. The CCPA-regulated business that collects personal information from consumers; or

B. The recipient of personal information from a business for a business purpose pursuant to a contract containing the restrictions similar to those imposed on a service provider under the CCPA.

**Note:** Thus, any “person” not falling into the above two categories is arguably a “third party” under the CCPA.

41. **What are the obligations of a “third party” under the CCPA?**

**Ans.** A third party *shall not sell personal information about a consumer that has been sold to the third party by a business unless the consumer has received explicit notice and is provided an opportunity to exercise the right to opt-out pursuant to Section 1798.120.*

42. **Are there any exemptions from the CCPA?**

**Ans.** Yes, there are several exemptions from the CCPA as follows:

A. *Gramm-Leach-Bliley Act (GLBA) Exemption:*

   The CCPA does not apply to personal information collected, processed, sold, or disclosed pursuant to the federal Gramm-Leach-Bliley Act (Public Law 106-102),

(Civil Code Section 1798.140(f))

(Civil Code Section 1798.140(w))

(Civil Code Section 1798.115(d))
and implementing regulations, or the California Financial Information Privacy Act (Division 1.4 (commencing with Section 4050) of the Financial Code).

**Note:** These exemptions do not apply to obligations associated with a data breach, as defined in Civil Code Section 1798.150. (See 49. “What are the repercussions to a business under the CCPA in the event of a data breach?”)

(Civil Code Section 1798.145(e))

B. **Pre-emption, fraud, legal claims, and other exemptions under Civil Code Section 1798.145:**

Pursuant to Civil Code Section 1798.145(a), the CCPA shall also not restrict a business’s ability to:

1. Comply with federal, state, or local laws.

2. Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities.

3. Cooperate with law enforcement agencies concerning conduct or activity that the business, service provider, or third party reasonably and in good faith believes may violate federal, state, or local law.

4. Exercise or defend legal claims.

5. Collect, use, retain, sell, or disclose consumer information that is deidentified or in the aggregate consumer information.

6. Collect or sell a consumer’s personal information if every aspect of that commercial conduct takes place wholly outside of California. For purposes of this title, commercial conduct takes place wholly outside of California if the business collected that information while the consumer was outside of California, no part of the sale of the consumer’s personal information occurred in California, and no personal information collected while the consumer was in California is sold. This paragraph shall not permit a business from storing, including on a device, personal information about a consumer when the consumer is in California and then collecting that personal information when the consumer and stored personal information is outside of California.
C. Retention exemption for one-time transactions:

A “one-time transaction” does not require a business to retain a consumer’s personal information that it collects in order to respond to a verifiable consumer request for the following if the personal information collected by the business during that one-time transaction is not sold or retained by the business or to reidentify or link the consumer’s personal data in a manner that would be considered personal information.

(D Civil Code Section 1798.100 (e) and Civil Code Section 1798.110 (d))

D. Other exemptions:

As found in Civil Code Section 1798.145, there are a number of other exemptions from the CCPA, including, but not limited to, exemptions related to evidentiary privilege, the Health Insurance Portability and Accountability Act, the Fair Credit Reporting Act, and others.

(D Civil Code Section 1798.145)

43. Does the CCPA apply to a consumer’s personal information that is collected prior to the law’s effective date?

Ans. In some cases the CCPA may apply to a consumer’s information that is collected prior to the law’s effective date, given that:

A. Companies subject to the CCPA must keep track of data they have collected over the preceding 12 months that is capable of being associated with or could be reasonably linked for the purposes of responding to a verifiable consumer request submitted under the CCPA, and;

B. Verifiable consumer requests involving said data can be submitted on January 1, 2020, meaning they could involve personal information dating back to January 1, 2019.

This aspect of the CCPA is commonly referred to as the “12-month look back”.

Page 34 of 38
Published 11/4/19
(Civil Code Sections 1798.110, 1798.115, 1798.130)

VII. Regulations and enforcement actions

44. Who is responsible for enforcing the CCPA?

Ans. Civil penalties provided for under the CCPA shall be exclusively assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General.

(Civil Code Section 1798.155(b))

45. Is a business subject to enforcement actions by the Attorney General under the CCPA prior to the passage of Regulations?

Ans. The Attorney General shall not bring an enforcement action under the CCPA until six months after the publication of the final regulations issued pursuant to Civil Code Section 1798.185 or July 1, 2020, whichever is sooner.

(Civil Code Section 1798.185(7)(c))

Note: The CCPA is silent on the start date by which a consumer may institute a civil action in the event of a “data breach”.

(See 48. “How does the CCPA define what is commonly referred to as a data breach?” and 49. “What are the repercussions to a business under the CCPA in the event of a data breach?”)

46. Are any state agencies providing guidance on the CCPA?

Ans. Any business or third party may seek the opinion of the Attorney General for guidance on how to comply with the provisions of the CCPA.

(Civil Code Section 1798.155(a))
47. **What is the Attorney General’s enforcement authority under the CCPA?**

Ans. A business shall be in violation of this title if it fails to cure any alleged violation within 30 days after being notified of alleged noncompliance. Any business, service provider, or other person that violates this title shall be subject to an injunction and liable for a civil penalty of not more than two thousand five hundred dollars ($2,500) for each violation or seven thousand five hundred dollars ($7,500) for each intentional violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General. The civil penalties provided for in this section shall be exclusively assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General.

Civil penalties assessed for a violation of this title, and the proceeds of any settlement of an action brought pursuant to subdivision (b), shall be deposited in the Consumer Privacy Fund, created within the General Fund pursuant to subdivision (a) of Section 1798.160 with the intent to fully offset any costs incurred by the state courts and the Attorney General in connection with this title.

(Civil Code Section 1798.155(b)-(c))

48. **How does the CCPA define what is commonly referred to as a data breach?**

Ans. What is commonly referred to as a “data breach” is defined under the CCPA as when a consumer’s **nonencrypted and nonredacted personal information**, as defined in subparagraph (A) of paragraph (1) of subdivision (d) of Civil Code Section 1798.81.5, is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of the business’s violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information.

(Civil Code Section 1798.150(a)(1))

**Note:** Civil Code Section 1798.81.5(d)(1)(a) defines **nonencrypted and nonredacted personal information** as follows:

1. An individual’s first name or first initial and his or her last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted:

   a. Social security number.
b. Driver’s license number or California identification card number.

c. Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account.

d. Medical information.

e. Health insurance information.

(Civil Code Section 1798.81.5(d)(1)(a))

49. What are the repercussions to a business under the CCPA in the event of a data breach?

Ans. In the event that a consumer’s nonencrypted and nonredacted personal information is subject to a data breach, that consumer may institute a civil action for any of the following:

A. To recover damages in an amount not less than one hundred dollars ($100) and not greater than seven hundred and fifty ($750) per consumer per incident or actual damages, whichever is greater.

B. Injunctive or declaratory relief.

C. Any other relief the court deems proper.

(Civil Code Section 1798.150(a)(1))

D. Additional Notes:

1. Actions pursuant to Civil Code Section 1798.150 in the event of a data breach may only be brought by a consumer if, prior to initiating any action against a business for statutory damages on an individual or class-wide basis, a consumer provides a business 30 days’ written notice identifying the specific provisions of this title the consumer alleges have been or are being violated.

2. In the event a cure is possible, if within the 30 days the business actually cures the noticed violation and provides the consumer an express written statement that the violations have been cured and that no further violations shall occur, no
action for individual statutory damages or class-wide statutory damages may be initiated against the business.

3. **A consumer shall not be required to give notice to a business** prior to an individual consumer initiating an action **solely for actual pecuniary damages** suffered as a result of the alleged violations of the CCPA.

4. If a business continues to violate the CCPA in breach of the express written statement provided to the consumer under Civil Code Section 1798.150, the consumer may initiate an action against the business to enforce the written statement and may pursue statutory damages for each breach of the express written statement, as well as any other violation of the title that postdates the written statement.

(Civil Code Section 1798.150)