

Privacy Policies – What REALTORS® Should Look For

Privacy Policies – Know How Your Vendors Will Use Your Clients' Information (And Your Own!)

Huge amounts of valuable data flow through a modern real estate transaction. When REALTORS® conduct transactions, not only the agents, but also various vendors and service providers receive and process the transaction data, much of which is personally identifying information of the client and even the REALTOR®. When you choose a service provider in the transaction, how do you know what it is going to do with the data that you share with them? Will the provider only use the data in connection with the transaction, or is it also going to sell the data to the highest bidder? As an agent, you are a fiduciary of your clients, and you have a responsibility to protect their interests, including taking care in knowing how their personal information is handled. To protect your clients (and your broker), you should review your service providers' privacy policies to understand how the data you provide them will be used.

Where to find a company's privacy policy and data rights

If you're using an online service provider or an app that collects personally identifying information, the data and privacy terms will usually be found in a privacy policy. Each website or app that collects data must display a privacy policy that discloses how it collects, uses, and shares the data it collects. A website should include a link to the privacy policy on the front page of the company's website. Mobile apps include a privacy policy link on the store page for the app. If you are negotiating an agreement with a service provider, the agreement itself should address the service provider's rights and limits with respect to data, although this may be achieved by a cross-reference to the provider's privacy policy.

You may agree to accept the privacy policy in a couple of ways, depending on the site or app. If you are actively sharing data as part of a transaction, or if you are signing up for a service or buying something, you may be required to click a box to accept or consent to the terms of use. When using an app or when your interaction is more passive, such as browsing a website, your use of the company's app, site or services will count as consent to the privacy policy.

What to look for in a company's privacy policy

Privacy policies are meant to be written in plain language, not complicated legalese. Not all of them are, though, and even the plain language can be long and difficult to follow. Here are a few key points to look for to guide your review of a privacy policy:

- ***What data is being collected?*** The company must disclose what data it collects from you. This will include the obvious methods of data collection, such as the personal information that you hand over for the company to provide you the service – for example, your name, your email address, or payment information. When it comes to your real estate transaction, this will also include your client data, such as the client's name, property address, sales price, or other information. But a company likely collects all sorts of other data when you interact with it, such as behavioral information tracking your usage across the company's website (for example what webpages you visit or how long you spend looking at a particular webpage).
- ***How is your data being collected?*** Some, but not all, the information a particular company will collect about you or your client will be the information you directly provide. But you might also provide other information indirectly,

in many cases simply by visiting the company's website. The company's privacy policy should disclose the various ways in which it collects data from you.

- **How will your data be used?** A company should tell you how it intends to use the information it collects. Obviously, they will save and use the data you provide to complete the transaction, whether that is transaction management for your deal, storing it in a CRM, sending data to title or escrow as you direct, or other intended uses. But often it will be more than just processing the particular transaction. It is important to understand some of the possibly unexpected ways that the company proposes to use the data that you hand over to it. For example, many companies will use their customers' information to help improve their services. In some situations, a company may choose to anonymize your data before using it, which means it strips the information that could personally identify you from the data before using it. A company may use both your personally identifying information and anonymized information in different ways. You should understand all the rights a company provides itself in the privacy policy, and in any terms of use or other contract.
- **Who else will be given the data?** The company should disclose who it may share your data with. Companies may use third-party providers for certain elements of their service, with whom your data may need to be shared for the company to operate or provide you with the service. For example, a company may use a back-end CRM provider that will receive your data as part of providing CRM service to the company. But many companies also reserve the right to share the data with third parties they think might be of interest to you or your client – or to sell it to any third party. The company's privacy policy should educate you on whether or not the company sells your data to others for marketing, advertising or other purposes.
- **How is your data protected?** Most privacy policies should address what security measures are in place to protect the information you provide. These are usually fairly general explanations, but you should check for these particularly when it pertains to client information.
- **What controls do you have over the data?** If you're using a service through a website or an app, most companies only offer a "take it or leave it" policy that doesn't give you much control other than not giving them your data in the first place. However, some companies may offer more granulated privacy controls that allow you to set different levels of privacy over different types of data. You should also check whether the company is covered by CCPA, in which case the law requires the company to provide you with more rights to control your data, such as rights to delete data or opt-out of data sharing. You can find more information about CCPA in our Legal Q&A at <https://www.car.org/riskmanagement/ga/broker-practice-folder/CCPA>. If you or your brokerage are negotiating a contract with a service provider, you should ensure the agreement has the privacy and data protection provisions you want – and any that might be legally required of you.

You can find more information about privacy policies and what to look for in a privacy policy on the California Attorney General's website at <https://oag.ca.gov/privacy/facts/online-privacy/privacy-policy>. Readers who require specific advice should consult an attorney.

Privacy Policies – Checklist

1. Find and read the vendor or company privacy policy and data rights.
 - How is it collected? For example, from information in your transactions?
 - How is it used? For example, for generic analysis or for their own business needs?
 - How is it shared with others? Do they monetize the data, or provide it to others? Will it give your client information to vendors or competitors?

2. Limiting use of your or your client's data.
 - What data is being collected?
 - Does it include your name, your email address, or payment information?
 - Does it include your client's name, property address, sales price, information about the property, or other information?
 - Does it include data about when you interact with the site or service, such as behavioral information tracking your usage across the company's website (for example what webpages you visit or how long you spend looking at a particular webpage)?
 - Do you have an ability to opt out of some of the provisions and still use the service?
 - If you use the vendor or website, is it a condition of using the data to access the site or service?

3. How will your data be used?
 - Is it solely to process the transaction?
 - Are other uses anonymized? Or is specific information (yours or client's) used?
 - Is the service allowed to use both your personally identifying information and anonymized data?

4. Who else will be given the data?
 - Is it limited to those essential to providing the services?
 - Are they sharing it with their own affiliates for marketing or other purposes?
 - Are they sharing with other companies (not affiliated) for marketing, advertising or other purposes?

5. What choices do you have?
 - All or nothing—take it or leave it—in order to use the service?
 - Different options such as limited to the function and not for advertising or marketing of other services?

6. Are they covered by the CCPA?
 - If the company is covered by CCPA, the law requires to provide you with more rights to control your data, such as rights to delete data or opt-out of data sharing.
 - You can find more information about CCPA in our Legal Q&A at <https://www.car.org/riskmanagement/qa/broker-practice-folder/CCPA>.