



SECURING YOUR CLIENTS' DATA IN AN UNSECURE WORLD

The global contest to mine, control, and exploit personal data is more intense than ever. As a real estate professional, it's important to help protect your clients and customers from the ever-present dangers of data theft and exploitation. This month, we'll explore ways to achieve that in our responses to three data-related questions from brokers on The Legal Hotline.

I am a Realtor® working in Minnesota. Does the California Consumer Privacy Act (CCPA) affect me?

Yes, it certainly could. The CCPA protects California consumers by mandating that companies possessing private consumer information handle it carefully and develop plans for complying with appropriate standards of care. This law doesn't impact small, independent brokers. However, it could apply if you're associated with a national brokerage, or even a large Minnesota brokerage that does business in California, including those with clients who are:

- Relocating to Minnesota from California
- Buying or selling Minnesota property but residing in California

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The CCPA applies only in the following circumstances:

1. Companies that receive or share personal information for more than 50,000 people
2. Companies that are in the business of brokering data; or that have a gross revenue in excess of \$25 million annually
3. Any entity that is controlled by or controls such a company (this could include common branding or trademarks)

NOTE: If it does apply, your brokerage will need a compliance plan. Violations of this act can be costly, with fines between \$2,500 and \$7,500, and even a private right to sue by a consumer.

As a Realtor®, I help clients through the entire purchase and sale process. This means that I sometimes have extensive client files that include loan numbers, bank account numbers, social security numbers and more. Do I need to do anything special with that private data?

Yes. First you have fiduciary duties to your clients to act in their best interests. That includes protecting their private data in a reasonable manner, given the current technology and circumstances. You should

review policies for third-party vendors who store your data and your clients' data to make sure it's secure, including email vendors, cloud storage vendors and more. You should utilize current antivirus software and regularly update all applications as required.

If personal information is stolen, consult with legal counsel. In addition to potential federal legal responsibilities, Minnesota state law specifically discusses a few circumstances, including, but not limited to the following:

Data Warehouse Breaches

Brokerages that function as data warehouses must abide by Minnesota requirements in the event of a data breach ([Minn. Stat. § 325E.61](#)). You should know that the simple act of taking photocopies of driver's licenses, accepting credit cards, or other forms of personal information puts your brokerage in the legal category of a data warehouse. That classification includes any business that owns or licenses personal information, including a social security number; driver's license or Minnesota identification card number; account, credit, or debit card number in combination with any other access or security code that is required to gain access to an account.

PINs, Security Codes, or Magnetic Strips

Businesses or persons who accept payment by access device must not retain PINs, security codes, or magnetic strip data after the transaction. If security of this information is breached, the business or person must reimburse the financial institution for the cost protecting the cardholders' information. This can include charges for cancellation and reissuance of a new card, closure and opening of accounts, and refunds for transactions made as a result of the breach. See [Minn. Stat. § 325E.64](#) for more.

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Use of Social Security Cards

Minnesota prohibits many acts related to the use or dissemination of social security numbers. For instance, social security numbers may not be:

- Printed on access cards
- Publicly posted
- Required to access an Internet website unless it is password protected
- Transmitted electronically
- Printed on mailed material unless required by law
- Used to assign an account number that includes a social security number

If you intend to take social security numbers as part of your business practice, you should review [Minn. Stat. § 325E.59](#) for a full list of prohibitions. For brokerages, this is almost inevitable, as they are required for employment purposes.

I have been hacked! I got a notice from someone who invaded my computer through ransomware and is demanding I pay a huge amount to get it back. What can I do?

Ransomware is malicious software that infiltrates a computer and locks or threatens the owner's private data until a ransom is paid. People are often tricked

into downloading it via email links or through files that appear legitimate. Ransomware is an increasingly common way to target people inside and outside of the real estate industry.

While ransomware schemes can be tricky to detect, there are a few tips for keeping your computer and data safe:

- Run updates to software programs when available
- Disconnect the computer immediately if you think it is infected
- Don't pay the ransom
- Regularly back up your files so you can safely recover your data
- Don't provide personal information in emails when you didn't initiate the contact or are not certain of the other party
- Don't click links or download items from an email unless you're sure about the source. Although some Ransomware emails seem suspicious and are easy to avoid, others are more deceptive and might look like they came from someone you know. Be sure to verify the sender or check with your information-technology provider
- Use an anti-ransomware security program on your computer

For more information, review the article [Protect Your Data Against Ransomware](#) from the U.S. Department of Homeland Security. You may also want to consider whether your current insurance covers ransomware attacks, or if you want to obtain insurance that does.



KEEPING YOUR BUSINESS HEALTHY & ETHICAL DURING COVID-19



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For most Realtors®, the “new normal” of life during the pandemic has overturned even the most ordinary business practices. As they scramble to keep up with the flurry of rules, guidelines, and restrictions that followed the governor’s stay-at-home order, many are confused and frustrated. Should you be taking clients on showings? Can you ask a client to fill out a health questionnaire? Are sellers obligated to disclose if they or someone in their household has been diagnosed with COVID-19? Should you be wearing a cloth face mask and requiring others to do so?

To help you get your bearings and continue doing business during the lockdown, we assembled an overview of best practices, pressing questions, and the answers every Realtor® needs to hear.

Always put your clients’ best interests—and health—first

In the time of pandemic, the Code of Ethics’ guiding principle to act in the best interest of your clients is more relevant than ever. That’s why the race to the closing table must be balanced by concerns for the health and safety of your clients and the vulnerable in our community.

“The National Association of Realtors® Legal Counsel has succinctly summarized a decision-making standard that should be considered by all

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How can I provide first-class service and move the transaction forward, while demonstrating care for the well-being of others, reducing the risk of exposure to, and spread of, COVID-19 and complying with local, state, and federal public health policies?

— National Association of Realtors®

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Realtors®,” said Susan Dioury, Minnesota Realtors® senior vice president Risk management and legal counsel.

“It’s not a prescriptive list of what you should and shouldn’t do. It’s an analysis of the circumstances, the level of risk, and what is best for everyone in any particular circumstance. Whether you’re considering meeting face-to-face with a client, or doing a showing, think about your client’s circumstances and what action would be in their best interest. Remember, the governor’s stay-at-home order states that you should conduct business remotely whenever possible. But if you believe you must conduct some aspect of your business in-person, NAR’s analysis gives you a tool to think it through.”

But how do you put that into play for your real estate practice? Dioury walked through some common questions and scenarios that Realtors® are encountering.

Showings—In person or virtual?

Like test driving a car, the showing is a time-honored component of the sales process. For most buyers, nothing can replace that tactile experience. But in the current moment, the once benign custom comes with a super-sized portion of risk.

“Just because the governor’s order includes real estate as an essential business, doesn’t mean it’s business as usual,” Dioury observed. “If you feel you must do a showing, it has to comply with guidelines from the Minnesota Department of Health (MDH) and the Centers for Disease Control (CDC). And you should remind your clients that the number-one protocol from both of them is social distancing.”

Dioury adds that if you have a client who is eager to host showings, you should consider whether they are in a high-risk category due to age or pre-existing conditions. If so, it may not be in their best interest to allow home showings.

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Can I ask prospective buyers to fill out health-status and travel questionnaires?

There is currently nothing that prohibits a broker from asking these questions, however you should consider:

1. Asking all prospective buyers the same questions to ensure Fair Housing laws are not violated.
2. Defining the purpose of such a questionnaire. If it's intended to screen out anyone who might be contagious with COVID-19, you will likely miss a significant number of potentially contagious people who are not showing any signs or symptoms.
3. Determining how you will handle rejections based on answers and implement them consistently.
4. Creating a policy for protecting and permanently disposing of the personal health and travel information you have gathered on individuals. You may want to consider speaking with your legal counsel about the pros and cons of adopting such a questionnaire.

Can I require my clients to wear a cloth mask during showings?

The CDC now recommends wearing simple cloth face coverings in public settings where other social distancing measures are difficult to maintain. Although a seller could make it a criteria for allowing a showing, wearing a face mask is not required by law.

My seller client got COVID-19 and is blaming it on the showings. Am I liable?

Are you legally responsible if a potential buyer with COVID-19 tours the home and your seller client subsequently contracts the virus? Can you be sued or face charges?

“No, the listing broker is likely not legally liable,” said Dioury. “Minnesota Realtors® representation agreements already include language that limits the broker's liability against claims of damage, loss or injury that arise from marketing the seller's property. So, listing brokers don't need to add a specific clause to cover COVID-19.”

What about a buyer who contracts COVID-19 after showings?

Although there is not similar language in the buyer representation contracts, it would be difficult for a buyer who chose to view homes to fault their broker if they contracted COVID-19 after the showings.

“That's why it's important to sit down with your buyer clients and help them weigh the pros and cons of on-site walk-throughs versus virtual tours or face-to-face meetings versus online meetings,” said Dioury. She

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What's Good for All is Good for Real Estate

Trying to make a living during a crippling state-wide shutdown can be frustrating, nerve-wracking, and at times infuriating. It can be easy to lose sight of the fact that the goal isn't to shutter businesses, but to "flatten the curve" and reduce the rate of viral transmission. That's why in a person-to-person business like real estate, it's so important to work remotely whenever possible.

"Realtors® are in a strong position to help curb the spread of COVID-19 by not doing in-person showings. However, some believe that puts them at a competitive disadvantage with brokers who keep the walk-throughs going. Ultimately, how each Realtor® chooses to conduct business is up to them," Dioury said. "But they should remember that every decision they make comes down to what's in the best interests of their clients. And at a time like this, that also means what's in the best interests of the entire community and the health of our Realtor® members too. We're all in this together, and we'll get through it by making the best possible decision in the circumstances that are presented to us."



adds that this is a good time to review the MDH's definition of social distancing:

- Voluntarily choosing to stay at home instead of going out in public
- Keeping a safe distance (at least six feet) between you and other people
- Avoiding gathering in small, crowded areas

"So, if it's not an essential gathering, consider postponing or getting together virtually. Social distancing must be followed to the maximum extent possible per the governor's stay-at-home order," Dioury said.



TURNING THEIR BACKS ON COVID-19 GUIDANCE

Some Realtors® are ignoring advice from local, state and national associations. Is it ethical?



Although the real estate profession is on the state's list of Critical Sector workers, does that mean we can or should ignore advice on how to handle our business interactions? And what are the penalties for those who do? Can we file ethics complaints against Realtors® who work while sick, hold open houses, and fail to observe social distancing standards?

The short answer is no. The Code of Ethics was not organized to handle pandemics, stay-at-home, and public health orders or criminal acts for violating them. So, it is not the proper venue for such complaints. There is no article or standard of practice that requires Realtors® to take the advice of Realtor® Associations; to comply with peacetime emergency orders; or adopt best practices on how to proceed during such unusual worldwide events. The advice being given by state, local and national associations attempts to update the best ways to serve clients and customers while respecting the general welfare of our communities and the law. It is a tough balancing act, which seems to change often. We do expect all Realtors® to tend to their civic duties and conduct themselves in a proper way regardless of the era or whatever crisis we face. Please be cautious, if not for yourself than for those around you.



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The COVID-19 pandemic is not an excuse to defy the Code of Ethics and is not a proper defense for ethic violations.
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At the same time, the COVID-19 pandemic is not an excuse to defy the Code of Ethics and is not a proper defense for ethics violations. Your duties of honesty and protecting and promoting the best interests of clients are not suspended during challenging times. In fact, now is a good time to review your ethical obligations and catch up on continuing education requirements related to the Code of Ethics. There are several good courses available and some of them are free. Check out these options at onlinelearning.realtor.com/Category/Index/48.