



PRIVACY AND NOTICE CONSENT FORM

Frequently Asked Questions

Personal Information

Q: What constitutes personal information?

A: As set out in the Privacy Notice and Consent form, personal information means any identifiable information about a person, including his/her name, address, phone number, and financial information, and may include information about that person's property (such as listing and selling price, lease rate, listing term, etc.).

Personal information is normally collected in initial dialogue with consumers in understanding their real estate interests and may be directly supplied by the consumers. It is also gathered through the contracts and other documents they fill out during a real estate transaction or through various conversations they have with their REALTOR®.

Q: What are the differences between primary and secondary uses of personal information?

A. The Privacy Notice and Consent form sets out specific uses for personal information – those that are primary and those that are secondary to the transaction for which the REALTOR® is being engaged.

Primary uses are all uses related to the actual transaction, such as listing the property on MLS®, making an offer or interacting with the consumer to help them find their perfect home. These are listed in sections 1a – 1h. Consumers generally cannot opt-out of these uses because they are integral to the transaction.

Secondary uses are not directly related to the transaction itself and may include reaching out to the consumer after the transaction. For example, sending out a calendar in the future or contacting them to determine if they are interested in additional real estate services. A REALTOR® could provide real estate services with respect to a transaction without requiring these uses.



Q: Can you cross out primary uses on the Privacy Notice and Consent form?

A: The primary uses are those related to the actual transaction, such as listing the property on MLS[®], making an offer or interacting with the consumer to help them find their home. The Standard Forms Committee, through consultation with REALTORS[®] and managing brokers, has determined that the primary uses of personal information are key to the successful completion of a transaction and consumers cannot generally opt out of these uses.

If a consumer does not want to provide written consent by delivering a signed Privacy Notice and Consent form because they don't want you to use their personal information for the primary uses, you may want to seek guidance from your managing broker. Provided you are still in compliance with PIPA and PIPEDA, you may be able to do an exclusive listing that may not require use and disclosure of as much personal information. Alternatively, you may choose to walk away from the consumer.

Why This Form?

Q: Is BCREA's Privacy Notice and Consent form a mandatory form? Why aren't the Real Estate Council of British Columbia disclosure forms that contain a Consumer Privacy Notice sufficient?

A: Privacy laws in British Columbia regarding the collection, use and disclosure of personal information require that anyone collecting such information must have a reasonable reason for doing so, must disclose that purpose and must obtain consent to collect, use and disclose the personal information. Compliance with privacy laws is mandatory.

If a REALTOR[®] intends to use a consumer's personal information, they are required by law to disclose what the information will be used for and obtain the consumer's consent. While not a mandatory form, BCREA's Privacy Notice and Consent form was developed as a tool to help REALTORS[®] comply with their obligations under privacy laws. It serves as a form of disclosure and a way to request and obtain consent from consumers for the most common uses of their personal information in a real estate transaction that fall outside those outlined in the Council's disclosure notice.



The Council's disclosure forms contain a privacy provision; however, they are specific to the collection and use of information as outlined on those particular forms. They do not cover other uses a REALTOR® may have for personal information collected from consumers, such as to help consumers sell, buy or lease real estate. This means that the Council's notice alone is not sufficient for a REALTOR® to comply with applicable privacy laws if they want to collect a consumer's personal information to use for purposes beyond those outlined in the Council's notice.

For further information about specific cases, REALTORS® should seek advice from their managing broker and/or lawyers.

Q: Why are the privacy provisions in the other BCREA forms and the Council discussion forms not sufficient?

A: The privacy provisions in other BCREA forms, such as the MLS Listing Contract and the Contract of Purchase and Sale, and certain Real Estate Council of BC forms, such as the Disclosure of Representation in Trading Services, also include provisions dealing with privacy matters and consents; however, these provisions and consents are limited to certain purposes.

The Council forms, for example, give notice that information will be given to the REALTOR®'s brokerage and to Council for the purposes of monitoring and ensuring compliance with the *Real Estate Service Act* Rules. Use of the personal information collected by way of these forms is limited to these purposes and any other use would be in breach of privacy laws.

Similarly, the BCREA forms that include privacy provisions do purport to provide REALTORS® with some consents, but they are buried within longer contracts and may not always be drawn specifically to the consumer's attention. They also do not include all the various uses that the Privacy Notice and Consent form includes. Further, these forms are often signed after a REALTOR® collects, uses and discusses personal information from the consumer. Accordingly, they may not serve to obtain meaningful and informed consent as required by privacy laws.



When to Use This Form

Q: When in the process do I need to obtain signature(s) for BCREA's Privacy Notice and Consent form?

A: REALTORS® should provide the consumer with, and discuss the contents of, the Privacy Notice and Consent form in advance of receiving/collecting personal information about an individual, as privacy laws in British Columbia require that consent is obtained before collecting, using and disclosing that information. With that in mind, it is prudent for a REALTOR® to seek informed and meaningful consent from a consumer for the collection, use and disclosure of personal information at the onset of the relationship.

Q: How can a REALTOR® quickly identify when a Privacy Notice and Consent form should be obtained from a consumer? In the following situations, would a Privacy Notice and Consent form be required to be signed?

- 1) Online lead generation**
- 2) Lead from office or sign call for specific property**
- 3) Consumers with an existing relationship**
- 4) Open houses**
- 5) Listing and buyers' appointments**

A: Generally, brokerages should adopt policies, procedures and enforcement mechanisms to protect consumers' confidential information. Such policies and procedures, which may already have been implemented as a result of privacy legislation, might include provisions to ensure that REALTORS® adequately disclose to consumers how and when the personal information the REALTOR® collects will be used. Such policies should make it easy for REALTORS® to identify when personal information is being collected from consumers.

1) In the case of online lead generation, it may not be practical to have the Privacy Notice and Consent form signed. However, brokerages and REALTORS® should still provide disclosure on their website that complies with applicable privacy laws if they collect personal information online. Consumers should be given the opportunity to understand how their information is used and given the opportunity to withdraw their consent.



2) In the case of an office lead or a sign call, if a REALTOR® is not collecting or using a consumer's personal information then the Privacy Notice and Consent form is not required. However, if the REALTOR® does collect personal information about a consumer, adequate disclosure should be made, and consent should be obtained.

3) In the case of consumers with an existing relationship (for example set up on automated emails or already party to a listing agreement), if those consumers were given the Working with a REALTOR® brochure (WWAR) in the past and consented to the privacy provisions on that form, then the Privacy Notice and Consent form may not be required. If a consumer with an existing relationship has engaged your services for a new transaction, it's best practice to complete a Privacy Notice and Consent form for each transaction, as required uses of personal information and consents may have evolved and ongoing disclosure is encouraged.

4) In the case of open houses, if a REALTOR® is not collecting or using a consumer's personal information then the Privacy Notice and Consent form is not required. However, if personal information is collected (for example, on a sign-in sheet), the REALTOR® should include adequate privacy disclosure and obtain consent for any intended uses of such information.

5) In the case of listing and buyers' appointments, it is likely that personal information is or has been collected from the consumer and will be used in the course of providing trading services. Accordingly, REALTORS® should have a Privacy Notice and Consent form signed.

REALTORS® should understand the privacy laws applicable to their businesses and how their brokerages comply with such laws. If in doubt, REALTORS® should obtain advice from their managing broker and/or lawyers.

Q: If privacy of personal information is based on each transaction, does a REALTOR® need to complete a new Privacy Notice and Consent form for each individual transaction? For example, if selling their home and helping them to buy another home a week later or if a listing is cancelled and relisted?

A: If the timeframe for each transaction is short, it could be appropriate to use one Privacy Notice and Consent form for both transactions. However, it would be best practice to complete a Privacy Notice and Consent form for each transaction as required uses of personal information and consents may evolve during your relationship with the consumer and ongoing disclosure is encouraged.



Q: As an unrepresented party where there is no duty of confidentiality, what privacy provisions still need to be considered? Does an unrepresented party need to sign the Privacy Notice and Consent form?

A: Yes. Any time a REALTOR® is collecting, using or disclosing personal information, whether from a represented or an unrepresented party, then the REALTOR® is required to make adequate disclosure regarding the same under applicable privacy laws. The disclosure made to the unrepresented party should reflect the actual purpose and use of that personal information.

The Privacy Notice and Consent form may be an appropriate way of making disclosure and obtaining consent. However, this should be determined on a case-by-case basis and will depend on the actual purposes for which the personal information is being collected and used.

Out-Out Boxes

Q: Can you explain the opt-out boxes and why we need to allow opt outs?

A: Privacy laws require that a consumer has the option to decline to provide consent for the use of their personal information (or if consent is given, to withdraw it in the future). Methods for declining or withdrawing consent should be clear and easy to follow. Accordingly, the Privacy Notice and Consent form has always contemplated the ability to opt out of certain uses that are not integral to the provision of services a REALTOR® would be providing and it has now been updated to make the process clearer and easier to follow.

Q: Why does the form include 4 separate opt-out boxes? Couldn't we just have one opt out for everything?

A: The new version of the form allows consumers to opt out of four specific secondary uses of their information. Instead of an all-or-nothing approach, breaking it out into four different opt-out boxes helps you start a conversation with a consumer about what options best meet their needs. For example, maybe the consumer only wants to opt out of receiving surveys, but would still like their REALTOR® to communicate with them in the future to determine if they require additional real estate services.

Q: Does a consumer need to initial the opt-out box for it to be valid?

A. While an initial is best, a consumer needs to clearly indicate their intention to opt-out in the box next to the secondary use clause that they wish to opt-out of. This could be a tick mark or putting a cross in the box.

Q: How do the opt-out boxes relate to practice?

A: Opt out 2a. If a consumer opts out of 2a, it means that the consumer is requesting that you, as their REALTOR[®], and the brokerage do not communicate with them in the future about additional real estate services. An example of this could be reaching out to them in 2 years' time to determine if they are considering selling their home, sending calendars or offering a gift at a later date. You may wish to explain to the consumer what types of communications you or your brokerage may have in the future and why these are valuable to your continued relationship. We are not expecting to see a lot of opt-outs here as both consumers and REALTORS[®] value their relationship.

Opt out 2b. If a consumer opts out of 2b, it means that the consumer is requesting that you, as their REALTOR[®], will not communicate with them about other products and services. Some examples of this could be reaching out to provide the consumer with recommendations for renovation services, cleaning or landscaping services or insurance products.

Opt out 2c. If a consumer opts out of 2c, it means that the consumer does not want you to share the information that you have collected with other REALTORS[®] outside of what is necessary to complete the transaction. Depending on your board's regulations, an example of this could be a REALTOR[®] approaching a consumer whose listing expired to see if they may be interested in a market evaluation or real estate services.

Something important to be aware of here is that opt-outs of 2c don't mean that another REALTOR[®] can never contact this consumer. It means that you will not be sharing the information you collected with another REALTOR[®], either directly or through MLS[®]. You may want to explain this to the consumer who is signing the form.



Opt out 2d. If a consumer opts out of 2d, it means that other REALTORS® and your real estate board cannot contact the consumer to conduct a survey. As consumers are often concerned with surveys, this is a separate option so that a consumer may elect to opt-out of surveys but continue their valued relationship with you.

As their REALTOR®, you are able to perform a survey specific to the transaction and how it's going or how it went, under the primary uses of the information. This cannot be opted-out of. However, sending a request like "Rank my Agent" would be excluded if the consumer opted out of 2d.

Q: What does a REALTOR® or brokerage need to do with a completed Privacy Notice and Consent form where the consumer has opted out of 2a and/or 2b?

A: This will depend on the brokerages policies. Some brokerages will track this information while others will require their REALTORS® to track this information. You will want to consult your managing broker or brokerage policies to understand the steps you need to take. As the collector of the information, a REALTOR® should pay attention to these policies and ensure they are enforced within the organization. Opt outs of 2a and 2b need to be tracked and reviewed before REALTORS® or brokerages contact consumers with an existing relationship in the future.

Brokerages may want to include policies to make it very clear that the brokerage will not use the information for any secondary uses. This will be a decision that each brokerage will need to make independently and weigh the tracking and administrative requirements vs. the value of the secondary uses the brokerage might want to utilize.

Q: Why would a REALTOR® need to discuss 2c and 2d with a consumer?

A: A collector of personal information must obtain consent for all reasons it will be used or disclosed. When information is uploaded to MLS®, the boards and other REALTORS® have access to the information and may use it for the purposes set out in 2c and 2d. If a consumer does not want their personal information to be used for either of these purposes, they need to have the opportunity to withhold or withdraw consent for these uses and that must be communicated to the board and specified in the listing details on MLS® so that the information is used only in accordance with the consent provided.



Q: What does a REALTOR® or brokerage need to do with a completed Privacy Notice and Consent form where the consumer has opted out of 2c and/or 2d?

A. You will want to consult your local real estate board's privacy policies and procedures as each real estate board is a little different.

Q: If a consumer opts out of 2c and/or 2d, does this mean that another REALTOR® can never contact them?

A: Something important to be aware of here is that these opt-outs don't mean that another REALTOR® can never contact this consumer. It means that you do not have consent to share the information you collect with another REALTOR®, either directly or through MLS®, for a purpose other than as set out in the form. You would want to make sure that you have safeguards and procedures in place with respect to the information that you collect to ensure you are not allowing the information to be used for a purpose that you do not have consent for.

Another REALTOR® could get the consumer's contact information independently and choose to contact the consumer and this wouldn't be governed under the privacy form opt-out as the original REALTOR® who collected the information would not have provided the information to the other REALTOR®. You should explain this to the consumer who is signing the form. There are other regulations in place that may govern these practices and they need to be carefully considered.

It's important to note that a number of the primary uses required in a real estate transaction do require personal information to be shared with other REALTORS® or the boards and, accordingly, including a statement that a collector of personal information will never share it with another REALTOR® or the boards is not practical and could actually get in the way of REALTORS® providing services to the consumer.

Q: What if a buyer opts out of 2c and/or 2d?

A: As there is no buyers' registry or buyers' MLS®, buyer information is usually not shared at the board level. So, unless there is a shared database at the brokerage level or other REALTORS® have access to your transaction files (for example on a shared server), then 2c and 2d don't necessarily apply to buyers.

What About Implied Consent?

Q: What happens if a consumer refuses to sign the form? Is there implied consent if they've already given you their personal information?

A: The Act provides for various ways that an organization can obtain consent. Consent can be implied in certain circumstances; however, relying solely on implied consent can be problematic because, in the event of a dispute regarding whether consent has been given, there is little or no written evidence regarding the content of that consent or whether all of the required elements for implied consent exist.

For implied consent, generally the purposes that are implied must be obvious to a reasonable person and the personal information must have been voluntarily given or, alternatively, the purposes must have been clearly disclosed to the consumer who needs to have been given an opportunity to decline to give consent.

In these cases, the actual implied consents are open to interpretation and, while they may extend to some primary uses in the Privacy Notice and Consent form, they may not include all of them if challenged.

Q: Does a REALTOR® need to have the consumer complete the Privacy Notice and Consent form, can't they rely on implied consent?

A: Privacy laws do provide for implied consent; however, to have implied consent, certain factors must be present. The reasons for needing the consent must be obvious to a reasonable person or properly disclosed to the consumer. Therefore, an implied consent may rely on others' interpretations of what consent is necessary. In the event of a dispute as to whether consent is given, no clear record of what you are allowed to do exists.

A collector of personal information and user should really strive for express written consent, which for most cases is obtained by asking the consumer to complete the Privacy Notice and Consent form.



Signing the Form

Q: Why doesn't the REALTOR® need to sign the form? Is it only the consumers that need to date it when they sign it or is the REALTOR® expected to date it as well when they complete it?

A: The Privacy Notice and Consent form is meant to provide disclosure to and gain consent from a consumer regarding the collection, use and disclosure of the consumer's personal information. The consumer is required to sign and date the form as evidence that the disclosure has been made and that the consumer has consented to the REALTOR® using the consumer's personal information.

The name of the designated agent and the brokerage should be included in the form as the person receiving the consent, but the REALTOR® does not need to sign or date the form.

Additional Resources on Privacy

- Legal Update 2019
- CREA resources on privacy (PIPEDA)
- Brokerage policy manuals and privacy officers
- Board privacy officers
- [Video on the Privacy Notice and Consent Form](#)