



## INTRODUCTION

In the usual course of real estate transactions, REALTORS and REALTOR organizations often require significant amounts of detailed information about identifiable individuals and companies. Most of this information is considered private under general community standards. The dissemination of information about an individual is not necessarily bad, indeed it is often vital in the conduct of business, but the indiscriminate dissemination of information, even if unintentional, may lead to the loss of privacy of an individual. Buyers and sellers therefore expect that the real estate organizations entrusted with this information will take positive steps to protect it. In recognition of this fact, the members of The Canadian Real Estate Association must adhere closely to strict rules governing the protection of this information. The Privacy Code, which applies to all member provincial/territorial associations, real estate boards, brokerage firms, brokers and salespersons, is made up of a set of principles which, if followed, sets in place a solid foundation within which the REALTOR community can protect its customers, clients, and the general public. The Privacy Code sets a minimum standard. To give life to the principles in this Code, detailed procedures concerning the collection, storage, and distribution of personal information are required to be developed by all REALTOR organizations. The Canadian Real Estate Association will review this Code at least every two years to ensure it is relevant and up-to-date.

### PRINCIPLE 1 – ACCOUNTABILITY

Members are responsible for the proper management of all personal information under their control, and shall designate one or more persons to be accountable for compliance.

- 1.1 The accountability for the protection of personal information rests with the individual REALTOR for information under his or her control. In the case of Boards/Associations, this refers to the Executive Officer. In the case of brokerages, it refers to the individual designated to be responsible for the brokerage under the provincial licensing legislation.
- 1.2 The accountable person may delegate the day-to-day procedures of compliance to one or more persons.
- 1.3 Because of the real cost to organizations of breaches of security and privacy, the designated individual should have an in-depth knowledge of the Privacy Code and should play a part in developing the procedures and ensuring staff conforms to the privacy policies.
- 1.4 The identity of the designated person will be made known upon request.
- 1.5 Members are responsible for personal information in their custody, including information transferred to third parties for processing. Each member should use contractual or other means to provide a comparable level of protection in those circumstances.
- 1.6 Every member shall implement policies and procedures to give effect to this Privacy Code including:
  - establishing procedures to protect the privacy of personal information;
  - training and communicating to staff about the organization's policies and procedures;
  - establishing procedures to receive and respond to complaints;
  - developing public information to explain the member's policies and practices

### PRINCIPLE 2 – IDENTIFYING THE PURPOSES OF PERSONAL INFORMATION

Members shall identify the purposes of collecting information before or at the time the information is collected.

- 2.1 Personal information of sellers is used both by the listing brokerage for marketing purposes and the board for purposes relating to the operation of its MLS® system. Both organizations must ensure they have obtained the necessary consents from the consumer.
- 2.2 Listing agreements must set out all of the potential uses the information will be put to by the board including distributing it to members through the MLS® system, retaining the data indefinitely and publishing it for statistical analysis or otherwise, advertising in board publications, placing the information on the Internet and any other uses the board may make of the data.
- 2.3 Listing agreements must disclose all classes of potential recipients of information including any non-member individuals or organizations who are allowed some form of access to MLS® information.
- 2.4 REALTORS must advise buyers and sellers the use that will be made by their brokerage of the information collected. This disclosure must be documented in the listing or buyer agency agreement or in some other document.
- 2.5 The collection of personal information shall be limited to that which is necessary for the purpose identified in 2.2 and 2.4.

### PRINCIPLE 3 – OBTAINING CONSENT

The knowledge and consent of the consumer are required for the collection, use or disclosure of personal information except where inappropriate.

- 3.1 Each member will make all reasonable efforts to ensure consumers understand how personal information will be used and disclosed by the organization.
- 3.2 Consent can be expressed orally (when information is collected over the telephone), in writing or electronically. The signing by a consumer of a representation agreement containing the disclosures set out under Principle 2 shall be considered written consent for those identified purposes.
- 3.3 Generally, the member will seek consent to use and disclose personal information at the time it collects it. However, that consent may be sought after the information has been collected, but before it is used or disclosed for a new purpose.
- 3.4 Express consent should be obtained whenever practical. However, consent may be implied for the collection, use and disclosure of personal information in accordance with the known expectations of a particular individual or in terms of what a reasonable person in similar circumstances would likely believe necessary, or where express consent is not practical and where the information would not, in the circumstances, be considered sensitive.
- 3.5 Consent may be given by a consumer, where appropriate, through an authorized representative such as a person with a power of attorney.
- 3.6 An individual may withdraw consent at any time subject to legal or contractual restrictions and reasonable notice. The organization shall inform the consumer of the implications of such withdrawal.
- 3.7 Members shall not refuse to represent a consumer for the reason only that the consumer has refused to provide consent for the collection or use of certain information unless that information is required to properly represent the consumer.
- 3.8 Consent to the collection, use or disclosure of personal information is not required in those circumstances set out in section 7 of the Personal Information Protection and Electronic Documents Act. Members may develop policies specifically dealing with these circumstances.

### PRINCIPLE 4 – LIMITING COLLECTION OF PERSONAL INFORMATION

Members shall limit the collection of personal information to that which is necessary for the purposes identified.

- 4.1 Members shall collect from buyers and sellers only the amount and type of information needed for the purposes identified to them.
- 4.2 Members may also collect personal information from other sources including credit bureaus, public bodies, government agencies and other third parties who represent that they have the right to disclose the information.
- 4.3 All personal information shall be collected by fair and lawful means.

### PRINCIPLE 5 – LIMITING USE, DISCLOSURE AND RETENTION OF PERSONAL INFORMATION

Members shall use or disclose personal information only for the reason it was collected, except with the consent of the consumer or as required by law.

- 5.1 Personal information will not be disclosed except as is necessary and reasonable to facilitate the real estate transaction unless the written consent of the individual for the extended disclosure is obtained or such disclosure is required by law.
- 5.2 Buyers and sellers must be informed that the member may be required, as a result of his/her agency obligations, to disclose personal information to other clients in the case of dual agency or where the individual providing the information is a customer and not a client.
- 5.3 Members shall keep personal information only as long as it remains necessary or relevant for the purposes identified or as required by law. 5.4 Members shall destroy any personal information no longer needed for its identified purposes or for legal requirements.
- 5.5 Information which has been aggregated so as to make it anonymous (eg. housing statistics) is not considered personal information.

### PRINCIPLE 6 – ACCURACY OF PERSONAL INFORMATION

Members shall keep personal information as accurate, complete, current and relevant as necessary for its identified purpose.

- 6.1 All reasonable efforts must be made to protect the integrity of the personal information by ensuring that it is relevant and as accurate and complete as possible to minimize the possibility that inappropriate or inaccurate information may be used to make a decision about the consumer.
- 6.2 Personal information will only be updated if it is necessary for the purposes for which it was collected or if revisions are requested by the consumer.

### PRINCIPLE 7 – PROTECTING INFORMATION

Members shall protect personal information with safeguards appropriate to the sensitivity of the information.

- 7.1 Personal information is considered confidential and due diligence must be exercised to ensure it is not stolen, lost, accessed, copied, used or modified without permission.
- 7.2 Members shall ensure that all employees and other persons acting on their behalf who have access to such data are required to conform to privacy guidelines.
- 7.3 The steps taken by Boards/Associations and brokerages to protect personal information in its possession should include, where appropriate
  - (a) physical measures, such as locked filing cabinets and restricted access to offices;
  - (b) technological measures, such as the use of computer passwords and encryption;
  - (c) organizational measures such as limiting access on a "need-to-know" basis and educating employees and salespersons on the privacy guidelines and procedures.
- 7.4 Members must establish and implement reasonable record retention and destruction policies consistent with the nature and need for the information and legislative requirements.

### PRINCIPLE 8 – OPENNESS CONCERNING POLICIES AND PRACTICES

Members shall make readily available to consumers specific information about their policies and practices relating to the management of personal information.

- 8.1 Information regarding a member's policies and procedures must be easy to understand, readily available, and will allow consumers to determine:
  - the title and office address of the person accountable for the member's compliance with the Privacy Code, and to whom inquiries or complaints can be forwarded;
  - the means of gaining access to the personal information held by the member;
  - what type of personal information is in the member's control and what it is used for.
- 8.2 The information described in 8.1 may be made available in a number of ways including brochures, mail information or on-line access.

### PRINCIPLE 9 – CONSUMER ACCESS TO PERSONAL INFORMATION

Upon request, members shall inform a consumer of the existence, use and disclosure of his or her personal information and shall give the individual access to that information. The consumer shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

- 9.1 Members shall, on request, inform consumers whether they hold personal information on them. Real estate boards, provincial/territorial associations and brokerages shall develop policies and procedures to allow consumers access to their personal information.
- 9.2 Policies regarding access to information by the public should be based on openness and ease of use. A sample procedure is as follows:
  - (a) One individual in the organization is designated as the person responsible for responding to access requests;
  - (b) On written request and appropriate identification satisfactory to the organization, an individual will be advised of personal information about him/her retained in the organization's records;
  - (c) Where information cannot be disclosed (for example the information contains reference to other individuals or is subject to solicitor-client privilege) the individual will be given reasons for non-disclosure;
  - (d) An individual may correct erroneous or incomplete information and the organization will amend that information;
  - (e) The information will be supplied at minimal or no cost to the consumer.

### PRINCIPLE 10 – CHALLENGING COMPLIANCE

A consumer shall be able to address a challenge concerning compliance with the above principles to the designated accountable person or persons in the member office.

- 10.1 An individual must be able to put forward a complaint that the principles of this Code have not been adhered to;
- 10.2 Individuals dissatisfied with the internal complaint resolution of an organization will be advised of the avenues available to direct their complaint, including the office of the Privacy Commissioner of Canada or, if applicable, the appropriate provincial privacy commissioner.