

The Virginia Consumer Data Privacy Act Q & A

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Q: What is the Virginia Consumer Data Privacy Act (VCDPA)?

A: VCDPA is a law that aims to protect Virginia consumers' rights by providing them with more control and choice with respect to their personal information and requiring companies to be more transparent in their handling of personal information.

Q: When does VCDPA go into effect?

A: VCDPA goes into effect on January 1, 2023 and unlike the California Consumer Privacy Act (CCPA), it does not include a lookback period.

Q: Who is regulated by the VCDPA?

A: VCDPA applies to persons that conduct business in the Commonwealth or produce products or services that are targeted to residents of the Commonwealth AND meet any one of the following thresholds:

- I. Control or process the personal data of at least 100,000 consumers OR
- II. Control or process personal data of at least 25,000 Virginia residents and derive over 50 percent of gross revenue from the sale of personal data.

Q: Who is protected by the VCDPA?

A: "Consumer" means a natural person who is a resident of the Commonwealth acting only in an individual or household context. It does not include a natural person acting in a commercial or employment context.

Q: What information is protected by the VCDPA?

A: "Personal information" is information that "identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household." Examples include:

- Identifiers such as name, address, online identifier, IP address, email address, account name, SSN, driver's license number, passport number
- Education, medical, or health insurance information
- Financial information, including personal property records, products or services purchased (or considered), and other consuming histories or tendencies
- Internet activity, including web browsing history
- Professional or employment-related information
- Geolocation data
- Inferences drawn from the consumer's information to create a consumer profile

Q: Are there exemptions from VCDPA?

A: Numerous exemptions exist with the VCDPA regulation. Most notably those that apply to the financial services industry include:

Gramm-Leach-Bliley Act (GLBA) - VCDPA regulations shall not apply to any (i) body, authority, board, bureau, commission, district, or agency of the Commonwealth or of any political subdivision of the Commonwealth; (ii) financial institution or data subject to Title V of the federal Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.);

Fair Credit Reporting Act (FCRA) - The collection, maintenance, disclosure, sale, communication, or use of any personal information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency or furnisher that provides information for use in a consumer report, and by a user of a consumer report, but only to the extent that such activity is regulated by and authorized under the federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.);

Q: What consumer rights are created by the law?

A: VCDPA grants consumers the rights to:

- To confirm whether or not a controller is processing the consumer's personal data and to access such personal data;
- To correct inaccuracies in the consumer's personal data, taking into account the nature of the personal data and the purposes of the processing of the consumer's personal data;
- To delete personal data provided by or obtained about the consumer;
- To obtain a copy of the consumer's personal data that the consumer previously provided to the controller in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another controller without hindrance, where the processing is carried out by automated means; and
- To opt out of the processing of the personal data for purposes of (i) targeted advertising, (ii) the sale of personal data, or (iii) profiling in furtherance of decisions that produce legal or similarly significant effects concerning the consumer.

Q. What obligations on the business does VCDPA create?

A. To comply, a business must:

- **Limit the collection of data** to what is adequate, relevant, and reasonably necessary in to process the real estate transaction.
- **Provide a privacy policy**, controllers shall provide consumers with a reasonably accessible, clear, and meaningful privacy notice that includes:
 - The categories of personal data processed by the controller
 - The categories of personal data that the controller shares with third party, if any
 - The categories of third parties, if any, with whom the controller shares personal data

- The purpose for processing personal data
- How consumers may exercise their consumer rights
- **Implement procedures to respond to verifiable requests**, free of charge for up to two requests annually, and in the manner the consumer normally interacts with the controller and within 45 days for:
 - Access
 - Correction of Data
 - Deletion
 - Opt-out
 - Information about collection, disclosure, or sale of personal information
- **Train employees** responsible for handling consumer inquiries about the business's privacy practices, compliance requirements, and how to handle consumer appeals.
- **Not sell consumer information** unless the consumer has received notice and an opt-out opportunity.
- **Delete** consumer information on request unless there is a basis within the Virginia law to retain.

Q: What are the costs of non-compliance?

A: There is no private right of action for the consumer under VCDPA, instead the Attorney General has exclusive authority to enforce all provisions within VCDPA. Per the regulation, the enforcement actions are as follows:

- I. Prior to initiating any action under this chapter, the Attorney General shall provide a controller or processor 30 days' written notice identifying the specific provisions of this chapter the Attorney General alleges have been or are being violated. If within the 30-day period, the controller or processor cures the noticed violation and provides the Attorney General an express written statement that the alleged violations have been cured and that no further violations shall occur, no action shall be initiated against the controller or processor.
- II. If a controller or processor continues to violate this chapter following the cure period or breaches an express written statement provided to the Attorney General under that subsection, the Attorney General may initiate an action in the name of the Commonwealth and may seek an injunction to restrain any violations of this chapter and civil penalties of up to \$7,500 for each violation under this chapter.
- III. The Attorney General may recover reasonable expenses incurred in investigating and preparing the case, including attorney fees, in any action initiated under this chapter.