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## Privacy Policy

Last Updated: June 6, 2024

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We care about our customers and know that your privacy is important to you. This Privacy Policy is our way of explaining how we collect personal information, why we need it, and how we use it.

Please see our [Privacy Snapshot](#) below for an overview of our privacy practices.

## Scope of this Policy

This Privacy Policy applies to your use of our websites (the "Sites") and our mobile applications (the "Apps" together with the Sites, the "Services") operated by Wayfair LLC and Wayfair Stores Limited, including our brands Wayfair, Joss & Main, AllModern, Birch Lane, and Perigold ("Wayfair", "we," or "us").

This Privacy Policy also applies to the personal information you provide to us through other interactions and correspondence. This could be, for example, when you share your information with our service representatives (e.g. a customer service agent, design professional, or an installation or assembly pro), through any of our marketing programs, or send us a letter, email, or chat. [Back to Top](#)

## Personal Information We Collect

### Information you provide to us:

- **Your contact details and account data** if you establish an online account with us (such as your name, email address, mailing address, phone number, and password).
- **Additional profile information** you may choose to provide (such as date of birth, gender, location, and preferred language). We may also ask you to provide additional information to identify yourself such as a government issued ID number if you do not have an account with us (e.g. when making or returning purchases at our brick-and-mortar stores in the United States).
- **Your payment information** if you make a purchase via the Services. We use third-party payment processors, such as Stripe, to process your payments. These third parties will collect the information necessary to effectuate your transaction with us, such as credit/debit card number, security/CVV code, and expiration date. Our payment processors may handle your payment information in accordance with their own privacy policies. Wayfair does not have access to your full payment information.
- **Tax-related information**, such as your Social Security number or your entity identification number or your VAT registration number (or similar), if you (i) participate in our product review program or (ii) are a B2B customer. We will use this information to prepare your Form 1099 and

other tax-related documentation related to the product review program, verify your business if you are a B2B customer, and to provide B2B customers with tax compliant invoices.

- **Your financing information** if you apply for financing solutions, such as our co-branded credit card or installment payment offering. As part of your application, we may collect information such as Social Security number, date of birth, and income. Our financing solutions are offered by third-party providers, such as Citibank. Your personal information will be used by these financing providers in accordance with their own privacy policies.
- **Your communications and contact history with us** (such as emails, text messages, service call recordings, chat and instant messages, or communications with our social media channels).
- **Other information you choose to provide** (such as product reviews, forum posts, survey responses, participation in promotions, and other user-generated content, including, but not limited to, images you upload).

Where applicable, we may indicate whether and why you must provide us with your personal information, as well as the consequences of failing to do so. For example, it may be necessary for you to disclose certain personal information in order for us to provide the Services to you.

**Subject to our Cookie Policy, we may automatically collect information from your use of the Services:**

- **Purchase history and saved items** (such as what you bought, what you've placed in or removed from your cart, or what items you've saved).
- **Log data and device information** (such as details about how you've used the Services, IP address, access dates and times, hardware and software information, device information, device event information, unique identifiers, crash data, cookie data, location data, and page/product views or clicks).
- **Geo-location information** (such as IP address, browser information, or mobile GPS information).

We use cookies and similar technologies (such as web beacons and local storage technologies) to collect such data. Please see our [Cookie Policy](#) for more information.

**Information we may collect from third parties**, including third party services (for example if you link, connect, or login to the Services with your Google, Facebook, Instagram, or Twitter accounts or

choose to participate in one of our marketing programs) or other sources (such as your contacts who want to invite you to use the Services or brands we partner with):

- **Contact details** (such as your name, email address, mailing address, and phone number).
- **Social media profile information** publicly available on your social media account (such as your Twitter or Instagram handle, profile description, posts tagging @wayfair etc.).

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## How We Use Personal Information

We use personal information for the following purposes or as otherwise described at the time of collection:

**Providing and supporting our Services.** We use personal information to operate, maintain, and provide you with our Services. In particular, we will use personal information to perform our contractual obligation under our terms of use, such as to allow you to create an account and make purchases via the Services, facilitate financing solutions, and for us to take payment, deliver your purchases, and process returns.

**Communicate with you about our Services.** It is in our legitimate business interests to use personal information to respond to your requests, provide customer support, and communicate with you about our Services, including by sending announcements, updates, security alerts, and support and administrative messages, and to administer surveys, sweepstakes, and contests.

**Improve, monitor, personalize, and protect our Services.** It is in our legitimate business interests to improve and keep our Services safe for our users, which includes:

- Understanding your needs and interests, and personalizing your experience with the Services and our communications.
- Troubleshooting, testing, and research, and keeping the Services secure.
- Investigating and protecting against fraudulent, harmful, unauthorized, or illegal activity.

**Research and development.** We may use personal information for research and development purposes in our legitimate business interests, including to analyze and improve the Services and our business, and to train our staff. As part of these activities, we may create or use aggregated, de-identified or other anonymized data from personal information we collect. We make personal information into anonymized data by removing information that makes the data personally identifiable to you. We may use this anonymized data and share it with third parties for our lawful

business purposes, including to analyze and improve the Services and promote our business.

**Marketing and advertising.** We, our service providers, and our third-party advertising partners may collect and use personal information for the following marketing and advertising purposes:

- **Direct marketing.** We may send you direct marketing communications, by email or otherwise, as permitted by law. See [Your Privacy Rights and Choices](#) below for information on how to stop receiving direct marketing communications.
- **Interest-based advertising.** We engage our advertising partners, including third party advertising companies (such as Google) and social media companies, to display ads around the web. These companies may use cookies and similar technologies to collect information (including, subject to our Cookie Policy, the automatically-collected data described above) about your interactions over time across our Services, our communications, and other online services, and use that information to serve online ads that they think will interest you. This is called interest-based advertising. For more information, please visit our [Cookie Policy](#).

Except where consent is required, we undertake such marketing and advertising on the basis of our legitimate business interests. Where we seek your consent, you may withdraw your consent at any time.

**Compliance and protection.** We may use personal information in our legitimate business interests to enforce and comply with our terms and policies, and to defend us against legal claims or disputes including:

- Protecting our, your or others' rights, privacy, safety, or property (including by making and defending legal claims).
- Auditing our internal processes for compliance with legal and contractual requirements and internal policies.
- Enforcing the terms and conditions that govern the Services.
- Preventing, identifying, investigating, and deterring fraudulent, harmful, unauthorized, unethical or illegal activity, including cyberattacks and identity theft.

Some processing may also be necessary to comply with applicable laws, lawful requests and legal process, such as to respond to subpoenas or requests from government authorities, and other legal obligations such as to keep records of transactions.

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## How We Share Personal Information

We share personal information with the following categories of recipients:

- Within Wayfair.
- Companies and individuals that help us deliver our products to you, such as suppliers, payment service providers, logistics professionals, gift card suppliers, repair and assembly providers, and delivery and freight companies.
- Professional service providers who help us run our business and provide support services to us, such as marketing companies, including email providers and mobile marketing providers, software vendors, and consultants.
- Advertising partners, including for the interest-based advertising purposes described above.
- Financing providers. By choosing to apply for a financing solution offered by a third-party financing provider, such as Citibank, you direct us to share certain personal information with that provider to facilitate your application. Your personal information will be used by that provider in accordance with their own privacy policy.
- Government and law enforcement agencies and private parties, as we believe in good faith to be necessary and appropriate to (i) comply with a legal process, subpoena, order, or other legal or regulatory requirement; (ii) enforce our terms of use or other policies; (iii) pursue available legal remedies or defend legal claims; or (iv) otherwise for the compliance and protection purposes described above.
- Acquirers and other relevant participants in business transactions (or negotiations for such transactions) involving a corporate divestiture, merger, consolidation, acquisition, reorganization, sale or other disposition of all or any portion of the business or assets of, or equity interests in, Wayfair (including, in connection with a bankruptcy or similar proceedings).

We may anonymize your personal information and share such anonymized information with third parties for any purpose permitted by applicable laws.

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## Blogs, Reviews, and Forums

The Services may from time to time offer publicly-accessible blogs, reviews, or forums. Any information you provide in these spaces may be read, collected, and used by others who access

them. To request removal of your information from blogs, customer reviews, or forums, please see [Your Privacy Rights and Choices](#) below. Please note that in some cases we may be unable to remove your information. [Back to Top](#)

## **Social Media Plugins**

The Sites and the Apps use social plugins, which allow you to interact with us through your Facebook, Instagram, Twitter, and other social media accounts. If you visit a page on our Sites or Apps that contains such a plugin, your browser establishes a direct connection to that social media site's web servers. The content of the plugin is transmitted by the social media site directly to your browser and incorporated by the social media site into the Sites or Apps. By integrating the plugins, the social media site receives the information that your browser has accessed on the corresponding page of our Sites or Apps, even if you do not have an account or are currently not logged in to your account with us. We have no control over the extent and use of information that the social media site collects using this plugin.

If you interact with a social media plugin by, for example, clicking a "Like" button or leaving a comment, the corresponding information is also transmitted directly to the social media server and stored there. Depending on your settings, the information will also be posted on the social media site and displayed to your contacts or friends on the social media site. The social media site may use this information for the purpose of advertising, market research, and tailor-made pages.

To understand what information social media sites collect when you interact with their plug-ins, please review their privacy policies. You may also have the option to change your settings in the social media site to prevent the collection of your information. [Back to Top](#)

## **Job Applicants**

When you visit the careers portion of our website, our [Candidate Privacy Policy](#) applies. [Back to Top](#)

## **Investors**

You may provide information to us when visiting the investors page of our website, such as your name and contact information. We use this information to communicate with you and respond to your requests. We may also use and share this information to provide improved administration of the website, and as otherwise necessary: (a) to comply with relevant laws or to respond to subpoenas or warrants served on us; (b) to protect and defend the rights or property of us or others; (c) in connection with a legal investigation; and/or (d) to investigate or assist in preventing any violation or potential violation of the law, this Privacy Policy, or our terms of use. [Back to Top](#)

## Our Security Measures

We use appropriate technical and organizational safeguards designed to protect your information from unauthorized use, disclosure, and loss. We use encryption technology, including current industry-standard encryption protocols, to protect personal information in certain areas of our Sites during transmission across the Internet. We use PCI-compliant payment service providers. If you have questions about the security of your information, please contact us [here](#).

We encourage you to take reasonable measures to protect your password and your computer to prevent unauthorized access to your account. Remember to sign out of your account and close your browser window if you are using a shared computer in a public place. [Back to Top](#)

## Data Retention

We will keep your information for as long as you have an account or as long as we need it to fulfill the purpose for which it was collected or disclosed to you at the time of collection. We may also keep some of your information as required to meet legal or regulatory requirements, resolve disputes, prevent fraud or abuse, enforce our terms of use, or for other legitimate business purposes.

When we no longer have a need to keep your information, we will either delete it from our systems or anonymize it so that it no longer identifies you. [Back to Top](#)

## Children's Privacy

The Service is not directed to children, and we do not knowingly collect information from children under 16. If you are a parent or guardian and believe that we have information about your child, please contact us as described in the [Contact Us](#) section below. [Back to Top](#)

## California Minors

California residents under 18 years of age may have the personal information that they posted on the Sites deleted by sending an email to [DataProtectionOfficer@wayfair.com](mailto:DataProtectionOfficer@wayfair.com) and requesting deletion.

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## Your Privacy Rights and Choices

**Modify your account information.** If you have a Wayfair account, you can review and update certain account information by logging into your account. You may also contact us to request deletion of your account. If we delete your account, you will not be able to access it.



**Opt-out of marketing communications.** You can stop receiving direct marketing messages from us at any time by updating your preferences [here](#) or by clicking any "unsubscribe" link in any marketing message you receive from us. It may take up to 48 hours to process your request and update our systems. If you request that we stop sending you marketing messages, we will continue to send you administrative and service communications (such as order updates and other important or transactional information). If you use more than one name or email address when communicating with Wayfair or using the Service, you may continue to receive communications from us to any name or email address not specified in your opt-out request.

**Opt-out of text messages.** You can stop receiving text messages at any time by texting "STOP". After you send "STOP", we may send you an additional text message to confirm that you have been unsubscribed. You will no longer receive text messages from that short code, but you may receive text messages if you are subscribed to other text lists. If at any time you have questions about the text messages, text "HELP". After you send "HELP" we will respond with instructions on how to use our service as well as how to unsubscribe. Message and data rates may apply.

**Online tracking opt-out.** You can opt out of the sale of or processing of your personal information for targeted advertising purposes and limit interest-based advertising as described on our [Your Privacy Rights and Choices](#) page.

**Personal information requests.** Depending on your location and the nature of your interactions with our Services, you may request the following in relation to your personal information:

- **Information** about how we have collected and used your personal information. We have made this information available to you without having to request it by including it in this Privacy Policy.
- **Access** to a copy of the personal information that we have collected about you. Where applicable, we will provide the information in a portable, machine-readable, readily-usable format.
- **Correction** of personal information that is inaccurate or out of date.
- **Deletion** of personal information that we no longer need to provide the Services or for other lawful purposes.
- **Additional rights**, such as to **object** to and request that we **restrict** our use of your personal information, and where applicable, you may **withdraw** your consent.

To exercise the above rights:

- Fill out the [Privacy Rights Request Form](#).

- Visit our "[Your Privacy Rights & Choices](#)" page.
- Contact us at [DataProtectionOfficer@wayfair.com](mailto:DataProtectionOfficer@wayfair.com) or at the addresses provided in the [Contact Us](#) section below.

Prior to responding to your requests, we may verify your identity by matching any requested identifying information you provide against the information we have about you. Depending on your jurisdiction, you may designate an authorized agent to make a request on your behalf. We will require the authorized agent to have a written authorization confirming that authority.

Wayfair will never discriminate against you for exercising any of these rights, but you may lose access to certain functionality or the ability to interact with certain programs or offers due to changes in the personal information Wayfair has access to after complying with your privacy requests.

**Right to complain.** You may have the right to lodge a complaint with our lead data protection authority in the EU, the Irish Data Protection Commissioner (<https://www.dataprotection.ie>) or with the data protection authority where you reside. Residents of the UK may choose to make their complaint to the Information Commissioner's Office (<https://ico.org.uk>).

**Limits on your choices.** In some instances, your choices may be limited, such as where fulfilling your request would impair the rights of others, our ability to provide a service you have requested, or our ability to comply with our legal obligations and enforce our legal rights. If you are not satisfied with how we address your request, you may submit a complaint by contacting us as provided in the [Contact Us](#) section below.

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## **Information for Visitors from Outside of the United States**

Wayfair is headquartered in the United States. We may transfer your personal information to our affiliates and service providers in the United States and other jurisdictions. Please note that data protection laws of the United States and other jurisdictions may not be as comprehensive as those laws or regulations in your country or may otherwise differ from the laws in your country.

When we engage in cross-border data transfers, we will ensure that relevant safeguards are in place to afford adequate protection for personal information, and we will comply with applicable data protection laws. For example, where our Service targets individuals in the European Economic Area, Switzerland or the United Kingdom, we may rely on an EU Commission or UK government adequacy decision or on contractual protections for the transfer of personal information. For more information about how we transfer personal information internationally, please contact us as set out in the

[Contact Us](#) section below. [Back to Top](#)

## Changes to this Privacy Policy

We may change this Privacy Policy from time to time, including to reflect new ways that we process your information. When we post modifications to this Privacy Policy, we will revise the "Last Updated" date at the top of this page. The modified Privacy Policy will be effective immediately upon posting on the Services. [Back to Top](#)

## Contact Us

Wayfair LLC is the entity responsible for your personal information, unless you're a user of our Sites or Apps based in Europe in which case Wayfair Stores Limited is the data controller of your personal information.

Please don't hesitate to contact us at [DataProtectionOfficer@wayfair.com](mailto:DataProtectionOfficer@wayfair.com), or in writing at:

Attention: Legal Department  
Wayfair LLC  
4 Copley Place  
Boston, MA 02116

or

Attn: Data Protection Officer  
Wayfair Stores Limited  
Wayfair House  
Tuam Road  
Galway, Co. Galway  
Ireland

If you are based in the UK, you may contact us at:

Attention: Legal Department  
Wayfair Stores Limited  
Angel House, 338 Goswell Rd, L4  
London England EC1V 7LQ

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## Privacy Snapshot

Here is a high-level snapshot of our privacy practices, but you need to read the entire Privacy Policy for complete information.

<b>Data Categories Collected</b>	<b>How We Collect</b>	<b>Primary Purposes of Processing</b>	<b>Key Disclosures</b>	<b>Can You Limit Sharing?</b>
Identifiers such as a real name, Internet Protocol address, email address, or other similar identifiers	When you visit or use our Services; from third-party sites and services	To provide our Services; to improve, monitor, and personalize our Services; to communicate with you; for marketing and advertising	Service providers Financing providers	No
			Advertising partners	Yes
Personal information categories listed in the California Customer Records Statute (e.g., name, contact details)	When you visit or use our Services; from third-party sites and services	To provide our Services; to improve, monitor, and personalize our Services; to communicate with you; for marketing and advertising	Service providers Financing providers	No
			Advertising partners	Yes
Commercial information, including but not limited to records of products or services purchased	When you visit or use our Services	To provide our Services; to improve, monitor, and personalize our Services; to communicate with you; for marketing	Service providers	No
			Advertising partners	Yes

		and advertising		
Internet or other electronic network activity information, including but not limited to browsing history and search history	When you visit or use our Services	To improve, monitor, and personalize our Services; for marketing and advertising	Service providers	No
			Advertising partners	Yes
Inferences drawn from information to create a profile about your behavior, preferences, etc.	When you visit or use our Services; from third-party sites and services	To improve, monitor, and personalize our Services; for marketing and advertising	Service providers	No
			Advertising partners	Yes
Geolocation data	When you visit or use our Services	To improve, monitor, and personalize our Services; for marketing and advertising	Service providers	No
			Advertising partners	Yes
Sensitive information	When you visit or use our Services	To provide our Services	Service providers Financing providers	No

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## Terms of Use

Last Updated: June 6, 2024

Welcome to Birch Lane!

Wayfair LLC and its subsidiaries and affiliates, including Wayfair Illinois LLC ("Wayfair", "we", "us" or "our"), provide website features and other products and services to you when you visit or shop our family of websites (including mobile websites) and our mobile applications, or use our software in connection with any of the foregoing, in each case subject to your compliance with these Terms of Use. Our family of websites and applications includes Wayfair.com and the Wayfair mobile application, as well as our other U.S. websites and mobile applications, including AllModern, Birch Lane, Joss & Main and Perigold (collectively, the "**Sites**").

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING THE SITES. These Terms of Use constitute an agreement between Birch Lane and you. Additional terms and conditions apply to some services offered on the Sites (e.g., the Wayfair Professional Program, Home Services, and Gift Cards) or through other channels. Those terms and conditions can be found where the relevant service is offered on the Sites or otherwise and are incorporated into these Terms of Use by reference. We recommend that you print out a copy of these Terms of Use for your records.

By using the Sites, you affirm that you are able and legally competent to agree to and comply with these Terms of Use. If you do not agree to these Terms of Use or if you are not legally competent to agree to them, then you may not use the Sites.

Please note that these Terms of Use contain provisions that govern the resolution of claims between Birch Lane and you, including an arbitration agreement, class action waiver, and jury trial waiver that affect your rights. In arbitration, there is no judge or jury and there is less discovery and appellate review than in court. Please see the Legal Disputes section for complete details and review carefully.

## **Privacy & Security**

Please review our Privacy Policy, which is incorporated into these Terms of Use and also governs your use of the Sites. To the extent there is a conflict between the terms of the Privacy Policy and these Terms of Use, the Terms of Use govern.

Information security is important to Birch Lane. We have established appropriate physical, electronic and managerial safeguards to protect the information that we collect from or about our users. Birch Lane does, however, reserve the right at all times to disclose any information as Birch Lane deems necessary to satisfy any applicable law, regulation, legal process or governmental request. Please click here for more information.

You are responsible for all activities that occur under your account on the Sites, and for establishing security procedures for maintaining the security and confidentiality of passwords associated with your account. You may not share your account or password with anyone, and you agree to (1) notify Wayfair immediately of any unauthorized access to or use of your password or any other breach of

security; and (2) exit from your account at the end of each session on the Sites. You agree not to create an account using a false identity or information, or on behalf of someone other than yourself.

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## Changes

Birch Lane reserves the right, at any time, to change these Terms of Use, our Privacy Policy and/or the Sites. Changes, however, shall not apply retroactively. Your use of the Sites following any such change constitutes your agreement to follow and be bound by the Terms of Use and/or Privacy Policy as revised. The revised Terms of Use and/or Privacy Policy supersede all previous versions, notices or statements regarding the Sites. If we request, you agree to sign a non-electronic version of these Terms of Use.

We will notify you of any change to these Terms of Use by any reasonable means, such as by updating the "Last Updated" date at the top of these Terms of Use. [Back to Top](#)

## Intellectual Property Rights

The Sites contain valuable trademarks and service marks owned and used by Birch Lane, including but not limited to, Birch Lane, the Birch Lane design logo, Wayfair, Joss & Main, AllModern, Perigold, and the tag line "a zillion things home" (collectively, the "**Birch Lane Marks**"). Any use of the Birch Lane Marks without the prior written permission of Birch Lane is strictly prohibited. The arrangement and layout of the Sites, including but not limited to, the Birch Lane Marks, images, text, graphics, buttons, screenshots, music, digitally downloadable files, and other content or material (collectively, the "**Site Content**"), are the sole and exclusive property of Birch Lane.

UNAUTHORIZED COPYING, REPRODUCTION, MODIFYING, REPUBLISHING, UPLOADING, DOWNLOADING, POSTING, TRANSMITTING, MAKING DERIVATIVE WORKS OF OR DUPLICATING ALL OR ANY PART OF THE SITES IS PROHIBITED.

Birch Lane uses a network of independent product and content suppliers, distributors and other such third parties to supply some of the products and content advertised on the Sites. All other trademarks, service marks, product names, package designs and company names or logos associated with these product and content suppliers, distributors and other such third parties that are not owned by us but appear on the Sites are the property of their respective owners.

For claims of copyright infringement, please see our [Copyright Policy](#). [Back to Top](#)

## Product Reviews, Social Media, and other User-Generated Content

From time to time, the Sites permit the submission of content, such as comments, photographs, text, graphics, moving images, sound, illustrations, blogs and product reviews, or any content or information that you publish through social media and permit us to feature by your use of the Wayfair Social Tags (as defined herein) or general written consent, whether generated by you and other users (in each case, "**User Content**"). User Content is governed by these Terms.

You are solely responsible for your own User Content and the consequences of posting or publishing it. Any User Content or other material, information or ideas that you submit to or post or publish on the Sites is non-confidential and non-proprietary. You acknowledge that you will not be paid for Wayfair's use of your User Content.

By submitting User Content directly or by using the Wayfair Social Tags (as defined herein), you represent and warrant to Wayfair that: (i) you have used and are personally familiar with the product that is the subject of your User Content, (ii) your User Content is accurate, honest, and reflects your opinion, (iii) your User Content contains clear and conspicuous disclosures if your User Generated Content is submitted as a result of a sweepstakes entry or gift from Wayfair, (iii) does not violate any copyright, trademark, trade secret, patent or other intellectual property right, any right of privacy or publicity of any third party or any applicable law, rule or regulation, (iv) you own or have the legal right to use and authorize Wayfair to use your User Content, including written consent to use of any product or the name, voice, likeness or any other applicable personal rights of each identifiable person featured or referenced in your User Content and (v) your User Content does not violate Wayfair's *Acceptable Use Policy* set forth below; (vi) and that you will indemnify Wayfair for all claims resulting from User Content that you supply.

As between you and Wayfair, you will retain all of your ownership rights in and to your User Content. By submitting User Content to Wayfair, you hereby grant to Wayfair a perpetual, worldwide, non-exclusive, irrevocable, royalty-free, sublicensable (through multiple tiers) and transferable right and license to use, reproduce, distribute, edit, modify, adapt, translate, reformat, publish, prepare derivative works based upon, display publicly, perform publicly and otherwise exploit (including but not limited to over the Internet, broadcast television or any other uses or media) your User Content, in whole or in part, including future rights that Wayfair (or its successor) may otherwise become entitled to that do not yet exist, as well as new uses, media, means and forms of exploitation throughout the universe exploiting current or future technology yet to be developed. You also hereby grant: (i) to Wayfair the right to use the name and social media user profile associated with your User Content, and (ii) to each user of the Sites a non-exclusive license to access your User Content through the Sites and to use, access, watch, reproduce, distribute, transmit, forward, display and perform such User Content in whole or in part, to the extent permitted by the Sites under these Terms of Use. We may display your User Content or create and display derivative works, including but not limited to



advertisements, from your User Content on pages or mediums where your User Content may be viewed by you or others, and we may use your User Content or the created derivative works to advertise, market and promote Wayfair or the Sites.

Wayfair does not endorse any User Content or any opinion, recommendation, or advice expressed therein. Wayfair reserves the right but is not obligated to monitor User Content or other content sent to or through the Sites. **Wayfair has the right to refuse, remove, edit or delete any User Content and/or to terminate any user's access to the Sites for any reason.** Wayfair takes no responsibility and assumes no liability for User Content. To the extent that User requires that User Content must be taken down due to third party copyright claims, please review our [Copyright Policy](#). [Back to Top](#)

## Social Media Tag Usage

When you tag us, we may want to share the User Content that you post.

BY USING #WAYFAIRATHOME, #WAYFAIR, #SHAREWITHWAYFAIR, #WAYFAIRFINDS, #YESALLMODERN, @PERIGOLD, #PERIGOLDDDESIGN, #MYBIRCHLANE, @BIRCHLANE, #MYJOSSANDMAIN, @JOSSANDMAIN, #AMCOMMUNITY, @ALLMODERN, OR @WAYFAIR AND ANY OTHER SIMILAR SOCIAL MEDIA TAG IN ANY WAY RELATED TO ANY OF THE SITES (THE "WAYFAIR SOCIAL TAGS"), EACH USER AGREES TO PROVIDE WAYFAIR WITH AN UNRESTRICTED, IRREVOCABLE, ROYALTY-FREE, PERPETUAL, FULLY PAID-UP, TRANSFERABLE, WORLDWIDE LICENSE TO USE THE UPLOADED IMAGE(S), TEXT, GRAPHICS, MOVING IMAGES, SOUND, AND ILLUSTRATIONS, OR ANY OTHER MATERIALS IN ANY AND ALL MARKETING MATERIALS, ON SPONSOR'S WEBSITES, AND THROUGH ALL SOCIAL MEDIA CHANNELS. EACH USER REPRESENTS AND WARRANTS THAT UPLOADED IMAGES DO NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, COPYRIGHTS AND TRADEMARK RIGHTS. [Back to Top](#)

## Acceptable Use Policy

By submitting User Content and otherwise using the Sites, you agree not to: (i) submit any User Content that is protected by or otherwise subject to any third party intellectual property or proprietary rights (including any privacy and publicity rights) unless you own, or have permission from the rightful owner of such rights to post such User Content and to grant Wayfair all of the rights granted herein; (ii) submit any User Content containing minors' likenesses that does not comport with relevant laws, rules, and regulations (iii) upload, post, e-mail or otherwise transmit any content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, hateful or racially, ethnically or otherwise objectionable; (iv) use the Sites to harm any person or entity, including Wayfair; (v) impersonate any person or entity, including but not limited to, a representative of Wayfair,

or falsely state or otherwise misrepresent your affiliation with a person or entity; (vi) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted to or through the Sites; (vii) upload, post, e-mail or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, junk mail or any other form of solicitation; (viii) upload, post, e-mail or otherwise transmit any content that contains computer viruses or other computer code, files or programs that interrupt, destroy or limit the functionality of the Sites or any other computer software or hardware or telecommunications equipment; (ix) intentionally or unintentionally violate any applicable local, state, national or international laws, rules or regulations, including but not limited to those promulgated by the U.S. Federal Trade Commission, U.S. Securities and Exchange Commission; (x) collect, store or use personal information about other users of the Sites without their consent; (xi) use the Sites (including through submission of User Content) to disparage or make unsubstantiated claims about any person, third party or its/their products or services; (xii) use any of the Sites in any manner that could overburden or impair any of the Sites or the networks or systems connected to the Sites; and/or (xiii) use any device, software or instrumentality to interfere with the proper working of the Sites or disobey any requirements, procedures, policies or regulations of networks connected to the Sites.

You also agree that you will not violate or attempt to violate the security of the Sites. Violations of system or network security may result in civil or criminal liability. Wayfair reserves the right to investigate occurrences which may involve such violations and may involve and cooperate with, law enforcement authorities in prosecuting users who have participated in such violations.

You further agree that you may not use, or allow any other person or entity to use, any materials found on this website for the purpose of investigating, supporting, threatening or filing any intellectual property infringement claim against Wayfair or its affiliates or for the purpose of developing or using an offering or product directly or indirectly competing with an offering or product from Wayfair. Your failure to comply with these prohibitions constitutes breach of these Terms of Use with respect to the materials at issue. Each instance of noncompliance (e.g., each use of a digital file contrary to these Terms of Use) constitutes a separate instance of breach and subjects you to a payment obligation in the amount of \$75,000 USD per instance of breach, as liquidated damages and not as a penalty. In addition, Wayfair reserves the right to seek damages for infringement for copyrighted materials. You agree that damages reasonably anticipated from a potential breach are difficult to ascertain because of their indefiniteness or uncertainty and the amount stipulated is reasonably proportionate to the damages actually caused by the breach. [Back to Top](#)

## **Product Orders**

The receipt of an order number or an email order confirmation does not constitute the acceptance of

an order or a confirmation of an offer to sell. Birch Lane reserves the right, without prior notification, to limit the order quantity on any item and/or to refuse service to any customer. Verification of information may be required prior to the acceptance of an order. However, by confirming your purchase at the end of the checkout process, you agree to accept and pay for the products as well as the shipping and handling charges and applicable taxes. The sales tax is based on the applicable state and local tax rates and laws, as well as the relevant circumstances such as the shipping, destination and/or service location of your order. For example, certain orders placed via mobile application while engaging with store-specific mobile application features are accepted, and payment is deemed received, at the participating store location, so that in some states the order will be deemed placed at the store location. As another example, orders placed on the Sites without using a store-specific mobile application, for shipment to destinations within the State of Illinois, are sold by Wayfair Illinois LLC, as indicated by your email order confirmation and invoice. Please consult a tax professional for more information regarding the applicable sales tax on your order. Your email order confirmation and invoice will identify the seller of record for your order and the applicable sales tax rate. Prices and availability of products on the Sites are subject to change without notice. Errors will be corrected when discovered and Birch Lane reserves the right to revoke any stated offer and to correct any error, inaccuracy, or omission (including after an order has been submitted). Certain orders constitute improper use of the Sites and the Birch Lane Rewards Program described below. Birch Lane reserves the right, at its sole discretion, to refuse or cancel any order for any reason. Your account may also be restricted or terminated for any reason, at Birch Lane's sole discretion. Items purchased pursuant to a quantity discount may be re-priced upon cancellation. [Back to Top](#)

## About Our Prices

Where a product listing on our Sites references a higher price, typically denoted by a strikethrough (e.g. "~~\$549~~"), such higher price represents the highest price at which we offered or sold the product at some point in the past. For "Flash Deals", where a product is temporarily being sold at a reduced price, an additional strikethrough price is presented that represents a recent previous price before the Flash Deal promotion. The "Sale" tag on a product listing on our Sites signifies that we are selling the product at a discount from a price in the previous 90 days.

When we use the term "Closeout," we mean either that the product has been permanently reduced and will not return to the original price or that the product is temporarily being sold at a reduced price in order to clear an overstock of either Wayfair or supplier inventory. Prices of products listed on our Sites as "Closeout" may fluctuate during the "Closeout" promotion period for such products. For temporary "Closeout" pricing, such products may return to prices that are equal to or greater than their original prices upon expiration of the applicable "Closeout" promotion period.

We do not price match. Promotional codes can only be applied during purchase. Customer Service will be unable to honor any promotional code adjustments post-order.

Prices and promotions on the Sites may differ from prices and promotions at our Wayfair, Joss & Main and AllModern physical retail locations. [Back to Top](#)

## Birch Lane Rewards Program

The Birch Lane Rewards Program (the "**Rewards Program**") is exclusively for users of the Sites who have registered for the Rewards Program in accordance with the directions set forth below and on the Sites. Rewards Dollars may be applied to future purchases at the Participating Sites in accordance with these Terms of Use. Please click [here](#) for complete Rewards Program details, as may be in effect from time to time and which are incorporated herein by reference. [Back to Top](#)

## Links to Other Websites

The Sites may contain links to third-party websites ("**Other Sites**") that are not under Birch Lane's control. Birch Lane makes no claim and accepts no responsibility regarding the quality, nature or reliability of the Other Sites that are accessible by hyperlinks from the Sites or link to the Sites. Birch Lane provides these links to you as a convenience and the inclusion of any link does not imply endorsement by Birch Lane of Other Sites or any association with the operators of such Other Sites. You are responsible for viewing and abiding by the privacy statements and terms of use posted at any third-party sites. [Back to Top](#)

## Mobile Devices, SMS, and Mobile Applications

If you use a mobile device to access pages of the Sites optimized for mobile-viewing, opt in to receive SMS (text messages) from Wayfair (as/when available), or use a mobile application, the following additional terms and conditions ("**Mobile Terms**") also apply to you. Your access to the Sites via your mobile device or use of a mobile application confirms your agreement to these Mobile Terms, as well as the rest of the Terms of Use.

By opting in, you agree to receive promotional and personalized marketing text messages (e.g., SMS and MMS) on your mobile device from Wayfair, including text messages that may be sent using an automatic telephone dialing system, to the phone number you provided when signing up or any other phone number that you designate. These messages may be recurring or one-time messages.

Message frequency varies. Wayfair reserves the right to alter the frequency of messages sent at any time, so as to increase or decrease the total number of sent messages. Wayfair also reserves the right to change the short code or phone number from which messages are sent and we will notify you

when we do so.

Our SMS text messaging programs may include:

- 84047: Promotional messages, message frequency varies
- 84047: Shopping cart reminders, message frequency varies
- 76069: Order updates and / or authentication texts, message frequency varies

Your consent is not required as a condition of purchasing any goods or services from Wayfair. You can opt out at any time and for any reason by following provided instructions or by texting "STOP" to the number associated with the SMS message. You will receive one further message confirming you are unsubscribed. You acknowledge that our text message platform may not recognize and respond to unsubscribe requests that do not include the STOP, END, CANCEL, UNSUBSCRIBE or QUIT keyword commands and agree that Wayfair and its service providers will have no liability for failing to honor such requests. If you unsubscribe from one of our text message programs, you may continue to receive text messages from Wayfair through any other programs you have joined until you separately unsubscribe from those programs. If you wish to join again, you can opt in at any time. If you have any questions or require further assistance, you may respond "HELP" to the number associated with the SMS message. For more information, please contact us by emailing [service@wayfair.com](mailto:service@wayfair.com) (please reference "Questions about SMS").

By agreeing to receive SMS messages from Wayfair, you certify that you are over 18 years of age and (a) you are the mobile account holder or (b) you have the account holder's permission to enroll the designated mobile phone number and understand that message and data rates may apply. You agree that you are solely responsible for all message and data charges that apply to use of your mobile device to access the Sites or use of a mobile application. All such charges are billed by and payable to your mobile service provider. Not all mobile devices or handsets may be supported and our messages may not be deliverable in all areas. Please contact your participating mobile service provider for pricing plans, participation status and details. Wayfair, its service providers, and the mobile carriers are not liable for delivered or undelivered content. You understand that wireless through Wi-Fi or a participating mobile service provider may not be available in all areas at all times and may be affected by product, software, coverage or other service changes made by your mobile service provider or otherwise. Additional terms and conditions may apply to your use of a mobile application, based on the location and nature of use and the type of mobile device on which you install and use the mobile application.

View our Privacy Policy [here](#). [Back to Top](#)

## **Notice to California Residents**

California Proposition 65 requires that special warnings be provided when products contain chemicals known by the State of California to cause cancer, birth defects, or other reproductive harm if the use of those products may cause exposure to those chemicals above specific limits. These warnings relate to some but not all tools, lead crystal glassware, ceramic tableware, tiffany style lamps, and electrical cords. Please call us prior to ordering if you have any questions regarding the safety of these products.

Pursuant to California Civil Code Section 1789.3, Birch Lane provides users of the Sites with the following notice: You may report complaints to the Consumer Information Division of the California Department of Consumer Affairs in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at 800-952-5210. [Back to Top](#)

## **Communications with Birch Lane**

For all communications made to or with Birch Lane, including but not limited to feedback, questions, comments, suggestions and the like: (i) you will have no right to confidentiality in your communications and Birch Lane will have no obligation to protect your communications from disclosure; (ii) Birch Lane will be free to reproduce, use, disclose and distribute your communications to others without limitation; and (iii) Birch Lane will be free to use any ideas, concepts, know-how, content or techniques contained in your communications for any purpose whatsoever, including, but not limited to, the development, production and marketing of products and services that incorporate such information. [Back to Top](#)

## **Indemnity**

You agree to indemnify and hold Wayfair and its agents and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of (i) your use of the Sites, including any User Content you submit, post to or transmit through the Sites, (ii) your violation of these Terms of Use or (iii) your violation of any rights of another user. [Back to Top](#)

## **Disclaimer of Warranties**

Wayfair intends for the information and data contained in the Sites to be accurate and reliable but since the information and data have been compiled from a variety of sources, they are provided 'AS IS' and "AS AVAILABLE". You expressly agree that your use of the Sites and any information contained therein is at your sole risk. Accordingly, to the extent permitted by applicable law, WAYFAIR

EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES AND CONDITIONS OF TITLE, NON-INFRINGEMENT, ACCURACY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES AND CONDITIONS THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. Some jurisdictions do not allow the disclaimer of warranties or conditions so such disclaimers may not apply to you. [Back to Top](#)

## Limitation on Liability

IN NO EVENT WILL WAYFAIR OR ITS OFFICERS, MANAGERS, MEMBERS, EMPLOYEES, AGENTS, SUCCESSORS, SUBSIDIARIES, DISTRIBUTORS, AFFILIATES OR THIRD PARTIES PROVIDING INFORMATION ON THIS SITE OR VIA OTHER CHANNELS, INCLUDING BUT NOT LIMITED TO PHONE AND EMAIL, BE LIABLE TO ANY USER OF THE SITES OR ANY OTHER PERSON OR ENTITY FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE) ARISING OUT OF THE USE OR INABILITY TO USE THE SITES OR ANY INFORMATION CONTAINED THEREIN, INCLUDING USER CONTENT, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, OR OTHERWISE, EVEN IF WAYFAIR HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

You hereby acknowledge that the preceding limitation on liability will apply to all content, merchandise and services available through the Sites or other channels. Because some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, in such jurisdictions liability is limited to the fullest extent permitted by law. Regardless of the previous paragraphs, if Wayfair is found to be liable, our liability to you or to any third party is limited to the greater of (a) the amount in dispute not to exceed the total amount which you paid to us in the twelve (12) months prior to the action giving rise to the liability or (b) USD \$100.

**IN ADDITION, TO THE FULLEST EXTENT PERMITTED BY LAW, YOU MUST PROVIDE NOTICE TO WAYFAIR OR BIRCH LANE, PURSUANT TO THE PROCESS REFERENCED BELOW, OF ANY CLAIM WITHIN ONE YEAR OF ITS ACCRUAL OR YOUR CLAIM IS WAIVED AND TIME-BARRED.** [Back to Top](#)

## Legal Disputes

**PLEASE READ THIS SECTION CAREFULLY. EXCEPT AS THE TERMS OF USE OTHERWISE PROVIDE, YOU WAIVE YOUR RIGHTS TO TRY ANY CLAIM IN COURT BEFORE A JUDGE OR JURY AND TO BRING OR PARTICIPATE IN ANY CLASS, COLLECTIVE, OR OTHER REPRESENTATIVE ACTION. Other rights that you would have if you went to court, such as access to discovery or appeals, also might be unavailable or limited in arbitration.**

## **Agreement to Binding Arbitration; Class Action Waiver**

**Any dispute, claim or controversy (that is not resolved informally as set forth below) between you and Wayfair or Birch Lane, its agents, employees, officers, directors, principals, successors, assigns, subsidiaries or affiliates (collectively for purposes of this section, 'Wayfair') arising from or relating in any way to: (1) these Terms of Use and their interpretation or the breach, termination or validity thereof, and the relationships which result from these Terms of Use; (2) your use of any website owned or operated by Wayfair and its affiliated brands; or (3) any products or services sold or distributed by Wayfair and its affiliated brands or through any website owned or operated by Wayfair and its affiliated brands (collectively, "Covered Disputes") will be resolved by binding arbitration, rather than in court. Covered Disputes shall be interpreted broadly.**

## **Mandatory Informal Dispute Resolution**

Wayfair values its customers and seeks to resolve disputes informally where possible. Before formally pursuing a Covered Dispute in arbitration, you agree to first send a detailed notice ("Notice") to Wayfair by email at [legal@wayfair.com](mailto:legal@wayfair.com). If Wayfair has a dispute with you, Wayfair agrees to first send a detailed Notice to your e-mail address on file with us. Your Notice must contain all of the following information: (1) your full name; (2) your address, telephone number, and email address; (3) information sufficient for Wayfair to identify any transaction at issue (e.g., your order number, order confirmation communication, etc.); and (4) a detailed description of your dispute, the nature and basis of your claim(s), and the nature and basis of the relief you are seeking with a calculation for it. You must personally sign this Notice. Wayfair's Notice will likewise set forth (1) information sufficient for you to identify any transaction at issue and (2) a detailed description of our dispute, the nature and basis of our claim(s), and the nature and basis of the relief we are seeking with a calculation for it. You and Wayfair agree to negotiate in good faith about the dispute in an effort to swiftly resolve it to your satisfaction without the need for a formal proceeding. Should Wayfair request a telephone conference with you in an effort to resolve your dispute as part of this informal process, you agree to personally participate (with your counsel if you are represented). This process should result in resolution of the dispute, but if for some reason it is not resolved within 60 days after receipt of a fully completed Notice and the parties have not agreed to extend this time period, you or Wayfair may initiate an arbitration. Compliance with and completion of this mandatory informal dispute resolution process is a condition precedent to filing any demand for arbitration. The statute of limitations and any filing fee deadlines shall be tolled while the parties engage in this process. Unless prohibited by applicable law, the arbitration administrator shall not accept or administer any demand for arbitration unless the claimant has certified in writing that they have fully complied with this process. This



certification shall be personally signed by you or Wayfair. A court shall have the authority to enjoin the filing or prosecution of arbitrations without first providing a fully completed Notice and participating in good faith in this informal dispute resolution process.

### **Initiating Arbitration and Arbitration Rules**

Any arbitration between you and Wayfair shall be administered by National Arbitration and Mediation (“NAM”) in accordance with NAM’s operative Comprehensive Dispute Resolution Rules and Procedures (the “NAM Rules”) in effect at the time any demand for arbitration is filed with NAM, as modified by this Legal Disputes Section. For a copy of the NAM Rules, please visit <https://www.namadr.com/resources/rules-fees-forms> or contact NAM at NAM’s National Processing Center at 990 Stewart Avenue, 1st Floor, Garden City, NY 11530 and email address [commercial@namadr.com](mailto:commercial@namadr.com). If NAM is unavailable or unwilling to administer the proceeding under the Legal Disputes Section as written, the parties agree that the arbitration shall be administered by the American Arbitration Association (“AAA”) pursuant to the AAA Consumer Arbitration Rules and the Consumer Due Process Protocol (collectively, “AAA Rules”) in effect at the time any demand for arbitration is filed with AAA, as modified by this Legal Disputes Section. If the AAA is unavailable or unwilling to apply this Legal Disputes Section as written, the parties shall mutually agree on an alternative administrator that will administer the proceeding under the Legal Disputes Section as written. If the parties are unable to agree, they will petition a court of competent jurisdiction to appoint an arbitration administrator that will do so. Any arbitration will be held before a single neutral arbitrator.

To begin an arbitration proceeding, you must send the demand for arbitration or arbitration notice form made available from the arbitration administrator and supplement that form with a detailed description of your claim, including with the information required for your Notice and the accompanying signed certification of compliance with the informal process referenced above (collectively referred to as “demand for arbitration”), to NAM (or to AAA if it is the administrator as set forth above). You must personally sign your demand for arbitration. You agree to also send Wayfair a copy of your demand for arbitration at [legal@wayfair.com](mailto:legal@wayfair.com). If Wayfair initiates arbitration, we will send a copy of our demand for arbitration to your email address on file with us.

You may choose to have the arbitration conducted by telephone, virtually, based on written submissions, or in person in the county where you live or at another location reasonably convenient for you, or at a mutually agreed-upon location. Wayfair reserves the right to request an in-person or videoconference hearing at any point within 14 days after its deadline to file any answer. After that time, Wayfair retains the right to request an in-person or virtual hearing from the arbitrator, which the arbitrator may elect to require along with your participation (with your counsel if you are

represented). Should a hearing take place in person, it shall take place consistent with the geographic parameters set forth above.

### **Arbitration Fees**

Payment of all filing, administration and arbitrator fees will be governed by the NAM Rules (or the AAA Rules should AAA be the designated administrator as set forth above). Upon a showing of financial hardship, Wayfair will consider your request to promptly reimburse your portion of the arbitration fees provided for in the NAM (or AAA) Rules.

### **Arbitrator Authority**

**The arbitrator has the sole authority to and shall address all claims or arguments by both parties concerning the formation, legality, and enforceability of this arbitration clause, the scope of this clause, and the arbitrability of any claim or issue arising between us.**

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages) only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. The arbitrator may not award relief for or against anyone who is not a party to the proceeding. The arbitrator is bound by and must follow the terms of these Terms of Use as a court would. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to address the essential findings and conclusions of law on which the award is based. The arbitration award shall be binding only between you and Wayfair and shall have no preclusive effect in any other arbitration or proceeding involving a different party, provided that the arbitrator may consider rulings in other arbitrations involving different individuals. The arbitrator may award fees and costs as provided by the NAM Rules (or the AAA Rules if AAA is the designated administrator as set forth above) or to the extent such fees and costs could be awarded in court or if the arbitrator determines that a claim, proceeding, or defense was frivolous or brought for harassment, for an improper purpose, or in bad faith. The arbitrator shall apply the provisions of Federal Rule of Civil Procedure 68 after entry of the award.

### **Sole Exceptions to Arbitration**

Notwithstanding the foregoing, in lieu of arbitration: (1) either you or Wayfair may elect to have an individual claim heard in small claims court consistent with any applicable jurisdictional and

monetary limits that may apply, provided that it is brought and maintained as an individual claim and is not appealed or removed to any court of general jurisdiction; and (2) you agree that you or Wayfair may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

### **Jury Trial and Class Action Waiver**

**Except as the Terms of Use otherwise provide and to the fullest extent permitted by law, you and Wayfair acknowledge and agree that you are each waiving the right to a trial by jury and to the litigation of disputes in state or federal courts of general jurisdiction. The parties further agree that any arbitration shall be conducted in their individual capacities only and not as a class action/class arbitration or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. You and Wayfair may not be plaintiffs or class members in any purported class, collective, private attorney general, or representative proceeding, or otherwise make or proceed with any claim on a collective or consolidated basis, and may each bring claims against the other only in your or its individual capacity. As referenced above, the arbitrator may award declaratory or injunctive relief only on an individual basis and only to the extent necessary to provide relief warranted by the individual claim. If a court determines that this class action waiver is not enforceable as to a particular claim or request for relief and all appeals from that decision have been exhausted (or the decision is otherwise final), then the parties agree that that particular claim or request for relief shall proceed in court but shall be stayed pending arbitration of the remaining claims.**

### **Special Additional Procedures for Mass Arbitration**

If 25 or more individuals seek to initiate arbitrations with Wayfair raising similar claims, and counsel for the individuals bringing the claims are the same or coordinated or the claims are otherwise coordinated ("Mass Claims"), you and Wayfair agree that these additional procedures shall apply, along with the applicable NAM Rules (or the applicable AAA Rules if AAA is the administrator as set forth above). You understand and agree that if you choose to initiate your claim as part of Mass Claims, the adjudication of your claim might be delayed. Counsel for the individuals and counsel for Wayfair shall each select 15 cases (per side) to be filed in and proceed in arbitration in bellwether proceedings to be resolved individually. Each case shall be assigned to a separate and different arbitrator. In the meantime, no other cases may be filed or deemed filed in arbitration, and the arbitration administrator shall not accept or administer arbitrations commenced in violation of these procedures. If the parties are unable to resolve the remaining cases after the conclusion of the first stage of bellwether proceedings, each side may select another 15 cases (per side) to be filed in and

proceed in arbitration in a second set of bellwether proceedings to be resolved individually. Each case shall be assigned to a separate and different arbitrator. This process shall continue consistent with this staged process of administering and moving forward a maximum of 30 individual arbitration proceedings at a time until the parties are able to resolve all of the Mass Claims, either through settlement or arbitration. If these additional mass arbitration procedures apply to your claim, any applicable statute of limitations shall be tolled from the time the first cases are selected for a bellwether proceeding until your claim is selected for a bellwether proceeding, withdrawn, or otherwise resolved. A court shall have the authority to enforce these mass arbitration procedures and, if necessary, to enjoin the filing or prosecution of arbitrations.

## **Governing Law**

You and Wayfair agree that any claim between us involves commerce under, and is governed exclusively by, the Federal Arbitration Act ("FAA") and federal law, and not by any state or local laws, or the laws of other countries, concerning or purporting to place limits on the availability or scope of arbitration or in any way imposing requirements beyond or inconsistent with those set forth in the FAA. Where otherwise applicable, the laws of the Commonwealth of Massachusetts apply. Should any action proceed in court (other than in small claims court), you consent to the exclusive jurisdiction of the federal and state courts of the Commonwealth of Massachusetts.

## **Other**

To the extent that any other provision of the Terms of Use is found to be inconsistent with rights, duties, and requirements of this arbitration agreement, or where the application of such a provision would change or render unenforceable any part of this arbitration agreement, such provision shall be null and void and the terms of this arbitration agreement shall control. [Back to Top](#)

## **Termination**

Your ability to access and use the Sites remains in effect until terminated in accordance with these Terms of Use. You agree that Birch Lane, in its sole discretion, may terminate your account and your use of the Sites and may remove and delete your User Content if Birch Lane believes that you have violated or acted inconsistently with these Terms of Use or for any other reason. Birch Lane also may in its sole discretion and at any time discontinue providing the Sites, or any part thereof, with or without notice. You agree that any termination of your access to the Sites may be effected without prior notice and you acknowledge and agree that Birch Lane may bar any further access to the Sites. Further, you agree that Birch Lane will not be liable to you or any third-party for any termination of

access to the Sites.

For instructions for deleting your account, please see the "Registering for the Service" section of our Privacy Policy.

The provisions of the Intellectual Property Rights, User-Generated Content, Acceptable Use Policy, Disclaimer of Warranties, Indemnity, Limitation of Liability, Legal Dispute sections, together with and any other rights and obligations which by their nature are reasonably intended to survive such termination, will survive any termination of these Terms of Use. [Back to Top](#)

## Right to Access

YOU MUST BE AT LEAST AGE 13 TO USE THE SITES. By using the Sites, you affirm that you are over age 13. If you are under age 13, you may not access or use the Sites.

IF YOU ARE A PARENT OR GUARDIAN THAT PROVIDES CONSENT TO YOUR TEENAGER'S REGISTRATION WITH AND USE OF THE SITES, YOU AGREE TO BE BOUND BY THESE TERMS IN RESPECT OF SUCH TEENAGER'S USE OF THE SITES. [Back to Top](#)

## Outages

Birch Lane periodically schedules system downtime for the Sites for maintenance and other purposes. Unplanned system outages also may occur. You agree that Birch Lane has no responsibility and is not liable for: (a) the unavailability of any of the Sites; (b) any loss of data, information or materials caused by such system outages; (c) the resultant delay, mis-delivery or non-delivery of data, information or materials caused by such system outages; or (d) any outages caused by any third parties, including without limitation any companies or servers hosting any of the Sites, any Internet service providers or otherwise. [Back to Top](#)

## Jurisdictional Issues

The Sites are operated by Birch Lane from its offices in Boston, Massachusetts, USA. The Sites are intended for users who reside in the United States of America. Birch Lane makes no representations or warranties that the Sites or any materials contained in them are valid, appropriate or available for use outside of the United States. If you access and use the Sites outside the United States, you do so at your own risk and are responsible for compliance with applicable local laws. Birch Lane reserves the right to limit the availability of the Sites and/or the provision of any service, program or other product described thereon to any person, geographic area or jurisdiction, at any time and in our sole discretion. Any software on the Sites is subject to United States export controls and may not be downloaded or otherwise exported or re-exported: (a) into (or to a national or resident of) Cuba, Iraq,

Libya, North Korea, Iran, Syria or any other country to which the United States has embargoed goods or which is subject to other applicable U.S. trade sanctions; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using any software from the Sites, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list. [Back to Top](#)

## General Information

No waiver of any provision or any breach of this Agreement will constitute a waiver of any other provisions or any other or further breach. In the event that any provision of this Agreement is determined to be illegal or unenforceable, the balance of the Agreement shall continue to be fully valid, binding, and enforceable. These Terms of Use set forth the entire Agreement between you and Wayfair with respect to use of the Sites and supersede any prior agreements between you and Wayfair relating to such subject matter. The Terms are not assignable, transferable or sublicensable by you except with Wayfair's prior written consent. No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default. No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by these Terms of Use. Any heading, caption or section title contained herein is inserted only as a matter of convenience and in no way defines or explains any section or provision hereof. Wayfair's performance of these Terms of Use is subject to existing laws and legal process, and nothing contained in these Terms of Use is in derogation of Wayfair's right to comply with governmental, court and law enforcement requests or requirements relating to your use of the Sites or information provided to or gathered by Wayfair with respect to such use. A printed version of these Terms of Use and of any notices given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. The parties agree that all correspondence relating to these Terms of Use must be written in the English language. [Back to Top](#)

## Violations

Please report any violations of these Terms of Use to the system administrator [here](#). [Back to Top](#)

## Questions?

If you have questions, comments or complaints about these Terms or the Sites, please contact us [here](#). (please reference "Questions about the Sites").

# Birch Lane's Copyright Policy

Last Updated: March 14, 2024

This Copyright Policy describes Birch Lane's policy of prohibiting any information or materials that violate another party's intellectual property rights from appearing on [www.Wayfair.com](http://www.Wayfair.com), [www.AllModern.com](http://www.AllModern.com), [www.JossandMain.com](http://www.JossandMain.com), [www.BirchLane.com](http://www.BirchLane.com), [www.Perigold.com](http://www.Perigold.com) and their related domains (collectively, the "**Site**").

The Digital Millennium Copyright Act of 1998 (the "**DMCA**") provides recourse for a copyright owner who believes that material appearing on the Internet infringes his, her or its rights under U.S. copyright law. Birch Lane complies with the DMCA by responding to notices and counter-notices that meet the then-current DMCA requirements. Please visit <http://www.copyright.gov/> for details about current DMCA requirements.

## Notification of Alleged Copyright Infringement

If you believe in good faith that material appearing on the Site infringes your copyright, you (or your agent) may submit an electronic notification to Birch Lane via [this Intellectual Property Claim Form](#), pursuant to the DMCA (a "DMCA Notice"). Completing this form will ensure that Birch Lane has all the necessary information to process your claim as soon as possible and is the most efficient way to submit a notice of alleged copyright infringement.

If you cannot use the electronic form, you may send Birch Lane a written notification by following [these instructions](#).

## Counter Notification

If you believe in good faith that your own copyrighted material has been removed from the Site as a result of mistake or misidentification, you may submit a written counter notification to Birch Lane's Copyright Agent pursuant to Sections 512(g)(2) and (3) of the DMCA. Follow [these instructions](#) to ensure that Birch Lane has all the necessary information to process your claim as soon as possible.

# Home Services

Last Updated: March 31, 2023

Assembly, installation, and professional services you purchase through the Sites are referred to herein as "**Home Services**". Home Services are provided by independent third-party service providers ("**Pros**"). The Pros are independent contractors and not employees of Wayfair. Wayfair does not provide the Home Services itself. Wayfair sometimes arranges for the provision of Home Services with Pros directly, and sometimes through other parties that contract with Pros ("**Partners**"), such as Angi, Handy and Go Configure. Wayfair may refer customer service requests regarding Home Services to the Partners. Wayfair makes no guarantee that it will be able to match you with a Pro. Scheduled Home Services dates and times are subject to change. Home Services will be performed in a good and workmanlike manner.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, WAYFAIR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE HOME SERVICES OR THE PROS. YOU AGREE THAT ALL HOME SERVICES ARE PROVIDED TO YOU ON AN "AS-IS" AND "AS AVAILABLE" BASIS. IN ADDITION TO THE LIMITATIONS OF LIABILITY SET FORTH ABOVE, YOU AGREE THAT WAYFAIR SHALL HAVE NO LIABILITY IN CONNECTION WITH THE HOME SERVICES, THAT WAYFAIR IS NOT RESPONSIBLE OR LIABLE FOR THE CONDUCT OF ANY PRO, AND THAT WAYFAIR WILL NOT BE LIABLE FOR ANY CLAIM, INJURY, DAMAGES, OR LOSSES OF ANY KIND ARISING FROM OR IN CONNECTION WITH THE HOME SERVICES.

Wayfair arranges for background checks on the Pros through third-party background check providers, or obtains contractual guarantees from Partners that Pros have been background checked. Regardless, you should exercise caution and common sense when interacting with Pros to protect your personal safety and property, just as you would when interacting with any person you do not know. You are responsible for verifying the identity of the Pro upon arrival. You are responsible for ensuring that the location where the Home Services are to be performed is safe and secure and that the Pro has free and clear access to such location.

You must be 18 years of age or older to purchase Home Services. You acknowledge and agree that you are solely responsible for your decisions relating to the Home Services. Either you or someone else 18 years of age or older authorized by you must be present at all times during the performance of the Home Services. You are responsible for inspecting the Home Services and signing any relevant forms. If you are not present during performance, the adult present must be authorized by you to inspect the Home Services and sign any required forms on your behalf. You agree that products assembled, installed or otherwise worked on or with by Pros (collectively, "**Products**") are for home



use only and not for commercial applications or use. You are responsible for designating the location where Pros assemble, install, and otherwise work on or with the Products. Wayfair, the Partners, and the Pros make no recommendation, representation, or warranty regarding the use or location of the Products, including the surface on which they are installed. You have not relied on any statement made by any of the foregoing parties in determining the use or location of the Products. You are responsible for obtaining any required approvals, permissions, permits, and variances necessary related to the Home Services. You assume all risk, including any risk of relocation or removal, arising from the use or location of the Products. You will follow all instructions and warnings relating to the Products and will ensure that all persons who use the Products do the same.

You shall indemnify, defend, and hold harmless Wayfair, the Partners, and the Pros, and each of their owners, affiliates, parents, subsidiaries, successors, assigns, officers, directors, agents, employees, attorneys, insurers, and representatives (each an "**Indemnified Party**") from and against any and all claims, demands, causes of action, proceedings, losses, injury, damages, expenses, fines, penalties, and costs arising from or in connection with (i) the use and/or location of the Products; and (ii) your breach or violation of this Home Services Section. You hereby waive, release, covenant not to sue, and forever discharge each Indemnified Party from any and all debts, demands, actions, causes of action, suits, covenants, contracts, agreements, promises, torts, damages, claims, demands, losses, and liabilities whatsoever of any name and nature, both in law and in equity, which you now have, ever had, or may in the future have against any Indemnified Party arising from or in connection with (i) the use and/or location of the Products; and (ii) your breach or violation of, or failure to abide by, this Home Services Section.

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## Birch Lane Rewards Program Terms

The Birch Lane Rewards Program (the "**Rewards Program**") is exclusively for users of the Sites who have registered for the Rewards Program in accordance with the directions set forth below and on the Sites. Rewards Dollars may be applied to future purchases at the Sites in accordance with the terms set forth below and our Terms of Use. Please click [here](#) for the Program Terms for the Wayfair Credit Card Rewards Program (the "Program Terms"), as may be in effect from time to time and which are incorporated herein by reference. Enrollment in the Rewards Program is automatic with registration at any of the Sites.

## Participating Sites

- Wayfair.com
- AllModern.com
- BirchLane.com
- JossandMain.com
- Perigold.com (currently participating in the Wayfair Credit Card Rewards Program and Product Review Program, but not the Referral Program)

## Membership Benefits

	<b>Rewards</b>
Rewards Dollars Earned	Members may earn specified "Rewards Dollars" from <ol style="list-style-type: none"><li>Wayfair Credit Card Rewards Program</li><li>Referral Program</li><li>Product Review Program</li></ol>
Redemption Period	Three months from the date on which Rewards-eligible purchase is made
Membership Fee	None

## Referral Program

Wayfair's Referral Program is designed to reward existing members ("Sponsors") with Rewards Dollars for referring new members ("Recipients") to Wayfair. Wayfair, AllModern, Birch Lane and Joss & Main are participating in this program and Sponsors can use their Rewards Dollars across all brands. However, Recipients can only apply their discount to the brand the Sponsor referred them to. Referral credit amounts may differ by site. Sponsors can refer as many friends as he or she would like, but will only receive Rewards Dollars for up to 10 successful referrals per month. If a Recipient's qualifying order is cancelled, Rewards Dollars will be voided. Previous purchases are not eligible for Rewards Dollars and Rewards Dollars cannot be applied retroactively. Invitations must be sent to individual recipients. Any attempt to distribute in bulk is grounds for immediate termination of the Sponsor's account and deactivation of their personal referral link. Distribution of Rewards bonuses is

subject to moderation in cases of suspected fraud.

## **Business and Trade Referral Program**

Sponsors will only receive their Rewards Dollars after their Recipient has used their unique promo code and their order has shipped. Sponsors will be notified by email when their Rewards Dollars are available for use. Rewards Dollars credited to Sponsors will only be valid for 90 days. If the Recipient does not use the unique promo code within 30 days, it will expire and no longer be valid. Previous purchases are not eligible for Rewards Dollars and Rewards Dollars cannot be applied retroactively. Orders containing Gift Certificate purchases are not eligible. Bulk distribution and distribution to strangers is prohibited. Violation of this is grounds for immediate termination of the Sponsor's account and deactivation of their personal referral link. Distribution of referral promo codes and Rewards Dollars is subject to moderation in cases of suspected fraud.

## **Product Reviews Program**

Wayfair's Product Review Program is designed to reward existing members for writing product reviews on products purchased on Wayfair.com, AllModern.com, BirchLane.com, JossandMain.com and Perigold.com. Members may be rewarded specified Rewards Dollars or may be offered other benefits for such reviews.

## **Redemption of Rewards Dollars**

Wayfair will post all earned Rewards Dollars on your account within a reasonable amount of time after the confirmed shipment of your qualifying purchase. Rewards Dollars can be only redeemed and applied as a credit against a purchase from one of our participating Sites. Rewards Dollars cannot be used to purchase gift cards, gift certificates, or manufacturer-excluded brands. Rewards Dollars are not redeemable for cash and cannot be returned for a cash refund, except to the extent required by law. Rewards Dollars will be automatically applied to your purchase at Checkout. If you do not wish to redeem Rewards Dollars at the time of purchase, select "Remove" at Checkout. Rewards Dollars may be combined with Wayfair promo codes, but not with any other Wayfair promotion, offer, or other discount. No credits or refunds will be issued for any reason after Rewards Dollars have been redeemed, including for unused Rewards Dollars, except as described in "Returns" below. Rewards Dollars can be used against product cost and shipping cost only. For orders with multiple items, Rewards Dollars will be applied across all items proportionally based on the dollar amount. Wayfair may apply other restrictions to or terminate the Reward Program at any time.

## **Returns**

If you return an item that was purchased in whole or in part using Rewards Dollars, the return will be processed in accordance with Wayfair's return and exchange policy. If the return is accepted by Wayfair, the Rewards Dollars applicable to the returned item will be credited back to your account.

## **Rewards Dollars Balance**

You can check your Rewards Dollars balance at any time by logging in at "My Account". A valid email address and password are required to view the Rewards Dollars balance in your account. Wayfair is not liable for any failure, delay or error in crediting Rewards Dollars to an account. You are responsible for all activity occurring in or through your account, including the redemption of Rewards Dollars, whether or not the activity was authorized.

## **Expiration**

Unless prohibited by applicable law, Rewards Dollars not used during the applicable Redemption Period will be forfeited. You may cancel Rewards Dollars by calling (888) 223-2423 and/or sending an email to [service@birchlane.com](mailto:service@birchlane.com), but members recognized on any of the participating Sites are unable to opt-out of the program.

## **Non-Transferability and Non-Aggregation of Rewards Dollars**

Rewards Dollars and any other right, obligation or benefit of the Rewards Program may not be transferred, assigned, sold, traded or bartered by any member or any other person without Wayfair's prior written consent, which Wayfair may withhold in its sole discretion, and any attempt to do any of the foregoing shall be null and void. In addition, Rewards Dollars are for the member's personal use only. Members may not aggregate Rewards Dollars from multiple accounts or use Rewards Dollars for the purpose of purchasing products from the participating Sites on behalf of others or for the purpose of reselling such products to others.

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## **Birch Lane Gift Card Terms and Conditions**

The following terms and conditions (the "Terms") apply to any Birch Lane gift card originally purchased by you or someone on your behalf (the "gift card"). Gift cards are issued by SK Retail, Inc. in the State of Massachusetts (referred to hereafter as either "Wayfair," "Perigold", "AllModern," "Birch

Lane," "Joss & Main," "we," "us," or "our"). By purchasing a gift card, accepting and retaining a gift card, or using a gift card, you agree to these Terms.

- Gift cards do not expire.
- Gift cards are valid in the country and currency in which they were purchased. Gift cards purchased on Wayfair.com, AllModern.com, BirchLane.com, JossandMain.com, or Perigold.com can be used interchangeably. Gift cards purchased on Wayfair.ca can only be redeemed on Wayfair.ca. Gift cards purchased on Wayfair.co.uk can only be redeemed on Wayfair.co.uk. Gift cards purchased on Wayfair.de can only be redeemed on Wayfair.de.
- Gift cards cannot be used to purchase gift cards.
- Gift cards are not redeemable for cash and cannot be returned for a cash refund, except to the extent required by law.
- Gift cards are not re-sellable, and gift card orders cannot be canceled, updated or refunded.
- E-gift cards may not be redeemable for up to 4 hours on weekdays, and up to 12 hours on weekends.
- Use of the gift card is limited to the amount of funds held on the gift card. The full amount of each purchase, including taxes, will be deducted from the funds held on the gift card, up to the total funds available on the gift card. Any unused balance will be placed in the recipient's gift card account and is not transferable. If you make a purchase and there are insufficient funds held on the gift card to cover that purchase, you must pay the difference by a valid credit card or debit card.
- The risk of loss and title for gift cards pass to the purchaser upon our electronic transmission to the purchaser. We are not responsible for and will not replace lost or stolen gift cards. Protect your gift card as if it were cash and safeguard the gift card from authorized use.
- Wayfair may provide gift card purchasers with information about the redemption status of gift cards.
- Wayfair reserves the right to change these Terms from time to time in its discretion. Such revised terms will be effective as to any gift cards purchased after the date said revised Terms are posted to the Wayfair websites.
- Resale of a gift card or use for unauthorized advertising, marketing, sweepstakes or other promotional purposes is strictly prohibited. Your right to use the funds on the gift card is a limited right, subject to these Terms and applicable law. We are not responsible for pricing,

typographical, or other errors, in any offer and reserve the right to cancel any orders resulting from such errors.

- If we suspect any fraud or misuse in connection with a gift card, we reserve the right in our discretion to suspend, terminate, or reissue the gift card.
- We reserve the right to refuse to honor a gift card that is obtained from unauthorized sellers and resellers. We have the right to close an account and charge alternative payment methods if a fraudulently obtained gift card is added and/or used to make or attempt purchases.
- The consideration paid for the gift card, including any unredeemed balances, is the property of Wayfair.
- We may collect or maintain personally identifiable information regarding the purchasers and users of gift cards in accordance with the privacy policy found [here](#).
- If any one or more of the covenants, agreements, provisions or terms of these Terms shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of these Terms shall in no way affect the validity or enforceability of the other provisions of these Terms.
- These Terms sets forth the entire understanding of the parties relating to the subject matter hereof, and all prior understandings, written or oral, are superseded by these Terms. All terms and conditions set forth herein are applicable to the extent permitted by law.

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