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FACTA changing real estate professionals' processes

By SEAN CASEY
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Real estate professionals need to start preparing for compliance with the latest wave of information protection law.

Effective June 1, the Fair and Accurate Credit Transaction Act of 2003 will require all companies that handle consumer credit data to properly secure and destroy that information when it is no longer needed. The legislation is intended to protect consumers from fraud and identity theft.

For real estate agents, brokers, property managers and landlords, professionals who keep files on clients that may include credit reports, photocopies of checks and other sensitive information, simply discarding old documents in the wastebasket or recycling bin will no longer be sufficient. In accordance with the law, these papers must be shredded in order to minimize the threats to their security.

In addition to paper documentation, similar processes must be in place to secure information stored on other media, such as CD-ROMs, computer disks and even hard drives.

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Violators also may open themselves up to potential class-action lawsuits.

In order to avoid these pitfalls, Michael James, chief executive officer of Fireproof Record Center in Columbus, said companies must regulate access to the information.

James suggests employers institute a policy of performing background and credit checks on perspective hires. Most companies already make such investigations, but it is important to remember that they are integral in keeping client information safe because they can weed out candidates that may have a history of credit fraud.

In addition to hiring controls, companies must exercise prudence in filing documentation that includes consumers' personal information, he said.

When files are active, companies should keep paperwork, CDs and floppy disks secured in drawers or cabinets that can only be accessed by authorized personnel. Similarly, sensitive data kept in digital formats should be safeguarded by computer controls, such as password protections and user logs, James said.

Once the retention of a document containing consumer information is no longer necessary, it should be placed in a secured, lockable container, which stores the document until it can be properly shredded either in house or by companies that specialize in secure disposal, he said.

Shredding keeps data from the view of personnel the company cannot directly control, such as cleaning service providers, refuse collectors or "dumpster divers," those who rummage through the garbage of businesses in search of consumer data, he said.

James said the document management business has grown exponentially over the past few years because of the passage of a series of acts that closely impact information retention, including FACTA, as well as the Sarbanes-Oxley Act of 2002 and the Health Insurance Portability and Accountability Act of 1996.

Companies must be mindful that the impact of such bills can also extend to office equipment, James said.

If a firm plans to upgrade personal computers, old hard drives used to record consumer information cannot simply be thrown away or donated to another entity. In compliance with FACTA, companies must exercise diligence in protecting that data, which means the hardware must be destroyed. This process prevents thieves from probing memory files for data, which possibly can be accessed regardless of its deletion, James said.