



MALPRACTICE ALERT!

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OBLIC

Ohio Bar Liability
Insurance Company

PRIVACY REQUIREMENTS MAY APPLY TO ATTORNEYS

The Federal Trade Commission has taken the position that the Gramm-Leach-Bliley Act of 1999 (P.L. 106-102), which applies to privacy policies of financial institutions providing services for personal, family or household purposes, applies to lawyers or law firms providing certain types of services to clients. It is unclear what activities may be included, but it appears that the Federal Trade Commission does consider firms engaged in tax planning and preparation, real estate settlement services, and collection to be covered by the Act. Persons providing credit counseling services are also covered by the Act. Thus, the areas of practice to which the Act might apply include real estate closings, tax advice or preparation services, estate planning, personal bankruptcy, debt collection, and employee benefit planning or counseling. **Compliance with the Act was required by July 1, 2001.**

Once again, the Act applies to "financial institutions" providing services for "personal, family or household purposes," 16 CFR 313 (1)(b). For example, tax advice given to an individual regarding their sole proprietorship business is not covered by the Act – but any tax advice relating to "personal, family or household" purposes would be subject to the Act. The Act applies to the collection of "nonpublic personal information," some of which would be acquired or generated by a law firm providing such services.

WHAT SHOULD YOU DO?

Regulations regarding the GLB Act can be found at 16 CFR, Part 313. Although the American Bar Association has requested that the Federal Trade Commission exempt lawyers from the requirements of the Act, to date, no exemption has been granted. You can

also research information about the Act at the Ohio State Bar Association website at www.ohioabar.org, and the governmental websites listed therein.

OBLIC is not providing legal advice with respect to the GLB Act. Particularly, it is unclear how the Act may be construed to apply to lawyer engaged in certain areas of practice. However, below is a draft of a privacy notice that you may wish to review in considering drafting your own notice to be provided to existing and new clients, if you believe you may be required to comply.

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(insert firm name) PRIVACY POLICY
NOTICE

Attorneys and other professionals, who advise on personal financial matters, are now required by a new federal law to inform their clients of their policies regarding privacy of client information. Attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by this new federal law. Therefore, we have always protected your right to privacy.

In the course of providing our clients with income tax, estate tax, gift tax, residential real estate closings, and other advice, we receive significant personal financial information from our clients. Additionally, we may receive personal information about our clients from other sources, including any of the following sources: *(the following are possible sources of information, but each attorney or firm must determine what they should disclose here)*

- Information we obtain from government agencies, public records or publications in the community;
- Information provided by other persons who have provided related services to you, such as other attorneys,

accountants, insurance agents, financial planners, banks, insurance companies, and others who assist you with various financial information or transactions;

-Information we obtain when handling lawsuits on your behalf;

-Information we obtain from members of the public or the legal community.

If you are a client of [INSERT FIRM NAME], you should know that all information that we receive from you is held in confidence, and is not released to people outside our firm, except as agreed to by you, or as required under applicable law, or as may be necessary when we contract with others to perform services for us or for you, or for your benefit. As an example: photocopying file materials by others when there is a time or monetary savings to us, and to you. We will only disclose the information necessary for others to carry out their agreed responsibilities, and we require others to treat your information as confidential in all such cases.

We retain records relating to professional services that we provide so that we are better able to assist you with your professional needs and, in some cases, to comply with professional guidelines. In order to guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards.

We reserve the right to change our privacy policy at any time, but if we do, or are required by law to do so, we will advise you of the changes as soon as possible.

We pride ourselves in providing you quality legal services. We respect and protect the privacy of those who engage us to perform such services. Please contact us if you have any questions, because your privacy, our professional ethics, and providing you with high quality legal services are important to our firm.

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The contents of this newsletter are provided for informational purposes only, and should not be construed as providing legal advice.

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