

Kimball, Tirey & St. John LLP

Legal Alert

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Identity Theft Prevention Program Required by June 1, 2010

The Fair and Accurate Credit Transaction Act of 2003 (FACTA) amended the Fair Credit Reporting Act (FCRA) and mandated that financial institutions and creditors develop and implement a comprehensive, written identity theft program aimed to protect businesses and consumers from identity theft. This new regulation is fast approaching and after several delays, the new Red Flag Rules will finally come into effect **June 1, 2010**.

The changing enforcement date and numerous revisions that have taken place have caused confusion in the industry.

According to the FTC, "The determination of whether your business or organization is covered by the Red Flags Rule isn't based on your industry or sector, but instead on whether your activities fall within the relevant definitions." Prudent property managers and owners should voluntarily comply with the regulations not only to protect themselves and tenants (current, potential, and former) from the harms of identity theft but also to protect themselves from potential future civil liability.

The most complicated portion of the legislation is the "red flags" portion which will be enforced June 1, 2010. The new rules require financial institutions and creditors to develop written policies and procedures for identifying, detecting, and responding to any practice or activity that may indicate potential identity theft. Every identity theft prevention program must:

- Identify relevant "red flags" or warning signs that may indicate possible identity theft.
- Develop and implement a safeguard program to detect red flags.
- Develop an appropriate response plan for each "red flag" to prevent and mitigate identity theft.
- Prepare a plan to update the program regularly.

One such component of this legislation that applies to property managers and owners is a landlord's duty to report address discrepancies. An address discrepancy occurs when a tenant screening company gives notice to the landlord that the address on the applicant's rental application is different from the address shown on the applicant's consumer report. Landlords have a legal duty under the FCRA to furnish the tenant screening company with the applicant's updated address when the landlord has formed a reasonable belief that the consumer report relates to the tenant to whom it was requested.

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It is important to implement policies and procedures regarding the new Red Flag Rules in order to minimize any potential liability under the FCRA. Kimball, Tirey & St. John LLP has developed a comprehensive Identity Theft Prevention Program that satisfies the requirements of the regulation. For assistance in developing and implementing policies and procedure regarding “red flags” and other required duties under the FCRA, contact Susan Aguilar by calling (800) 757-1700.

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