



PENNSYLVANIA DATA SECURITY LAWS

PRIVACY OF SOCIAL SECURITY NUMBERS ACT

Q: What is the Privacy of Social Security Numbers Act?

A: This law makes it a summary criminal offense to “intentionally communicate or otherwise make available to the general public” any individual’s Social Security Number (“SSN”). As a general matter, showing someone else’s SSN to someone who has no legitimate need to see it is prohibited.

Q: When does this law go into effect?

A: The law will go in effect on December 26, 2006.

Q: Are there specific activities prohibited by the Act?

A: There are several specific prohibitions in the law, including:

1. Printing an individual’s SSN on any card required to access products or services provided by the person or entity.
2. Requiring an individual to transmit their SSN over the Internet unless the connection is secure or the SSN is encrypted.
3. Requiring an individual to use their SSN to access an Internet website *unless* a password or unique access personal identification number or other authenticating device is also required.
4. Printing an individual’s SSN on any material mailed to that party *unless* Federal or State law requires the SSN to be on the document mailed.

Q: Is there ever a time where I can print an SSN on something being mailed?

A: A Social Security Number may be included in a mailed document when Federal or State law requires the SSN to be on the document being mailed. The Act also permits mailing an SSN where it is included in a document used to establish, amend or terminate an account, contract or policy, as well as documents that are to confirm the accuracy of an individual’s SSN. The law does not prohibit or limit a consumer from printing their SSN on a blank form and mailing it to you.

Q: Do I need to take any special precautions when mailing a document containing an SSN?

A: A SSN may never be printed in whole or in part on a postcard or other mailing not requiring an envelope, nor may it be visible on the envelope. Although not specifically required by the Act, you should not mail any document where the SSN can be seen through the envelope either. For example if the envelope has a clear window, make sure the SSN isn’t visible through the window.

Q: Does the Privacy of SSNs Act prohibit me from requesting an SSN to complete a real estate transaction?

A: No. The law does not prevent collection of a consumer's SSN where the use is required by law or for legitimate internal verification or administrative purposes. A broker is permitted to request the number for those purposes. There are four primary purposes for which a client's SSN might be required in a real estate transaction:

1. Performing a domestic relations lien search;
2. Running a credit report;
3. Filling out a W-9 to open an interest-bearing escrow account; and
4. Verifying that a seller is not a foreign entity for the purposes of compliance with the federal Foreign Investment in Real Property Act – FIRPTA – (mostly for commercial transactions).

If the use envisioned by the broker isn't one that is required by law or for legitimate internal verification or administrative purposes, and there is some way to proceed without using the SSN, then changes should be made to move forward without using the SSN in the future. For example, if the broker's practice has been to use the client's SSN as the user ID to access the broker's web site, the broker should strongly consider changing this practice.

Q: What if I am currently using a client's SSN in a way that is inconsistent with the law?

A: If an entity is currently using an SSN in a manner that would be illegal under the Act, that entity is allowed to continue using it where:

1. the use is continuous and not stopped for any reason; and
2. an annual disclosure is provided that informs the individual of their right to stop the use by submitting a written request.

For example, the Act doesn't permit a requirement that a consumer use his SSN to gain access to a Web site *unless* a password or any other unique personal authenticating or identifying device is also required. If your current policy requires consumers to use an SSN to access your brokerage Web site and that policy remains intact, you could continue that requirement as long as the appropriate notifications are provided each year. But once the consumer uses a different ID, you cannot go back to a requirement that they use the SSN since the continuous use of the SSN has been interrupted.

Q: What happens if an individual asks to have the use of her SSN discontinued?

A: If the individual request that this use be stopped, it must be discontinued within 30 days of receipt of the request. No entity may deny further services to an individual after that individual submits a written request to stop using their SSN, so you will need to make sure that any necessary changes are made to permit you to continue providing service without using the SSN.

Q: What about court documents or other government documents?

A: The Act contains exceptions for documents filed in court, government documents required to be open to the public, and documents created, filed recorded or maintained by a governmental agency.

Q: Are any businesses exempt from the law?

A: Businesses covered by the Gramm-Leach-Bliley Act (generally financial entities), health care providers covered by the Health Insurance Portability and Accountability Act (HIPAA), and entities subject to the Fair Credit Reporting Act (FCRA) are all exempt from the Act. Although nearly all businesses are subject to a small degree to the FCRA, the exemption likely only applies to businesses, such as credit reporting agencies, that are highly regulated by the FCRA.

Note that for any brokerage with an affiliated business that may be exempt, the exemption would apply only to the affiliated business. For example, if a broker owns a mortgage company that is subject to the Gramm-Leach-Bliley Act, the exemption is only for mortgage-related activity, not for brokerage activity.

Q: What should I do with all the Social Security Numbers I currently have in my files?

A: The Act doesn't require that you take any action regarding any SSNs you might currently have on file assuming they are being used for internal administrative purposes only. In most cases, securing the files in a manner to restrict access only to authorized personnel – which should be brokerage policy to begin with – should be sufficient to avoid liability.

If the broker wishes to remove this information from closed files, keep in mind that state law requires that brokers maintain closed files for at least 3 years, and your brokerage counsel may recommend a longer period. Do not destroy documents necessary for maintaining the integrity of closed files. Further, if you do intend to destroy all or parts of your files, remember that even the destruction of the files is covered by this law. That is, if you simply put documents or files in the trash and those files are found by someone, you may have violated the law. All documents containing a client's SSN should be shredded or otherwise securely destroyed.

Q: What is the penalty for violating this law?

A: Fines for violating this law, which goes into effect at the end of December, range from \$50 - \$500 for the first offense, and \$500 - \$5000 for any subsequent offense. In addition, district attorneys and the Attorney General are given authority to institute criminal proceedings for violations under the Act.