

# Business Brief

## Business and Client Advisory



### CALIFORNIA PRIVACY LAWS EFFECT BUSINESS

Scenario Number 1: You've just fired an employee. After the employee left the premises, you discover that the employee has accessed and may have copied part, if not all, of your customer database. This customer database includes information such as the person's name, account numbers, and personal identification numbers like the customer's social security number.

Scenario Number 2: You have an agreement with another company to provide an outside sales force for your product. You learn, from that company, that a hacker accessed your customer database.

Beginning July 1, 2003, under Scenarios 1 and 2, California law will require you to promptly notify, in writing, every California customer on that database whose personal information was, or may have been, accessed.

**California's new privacy law<sup>1</sup> requires any person or business that conducts business in California, and either owns or licenses a database of personal information to promptly disclose any breach of the security of the database.** The disclosure must be made to every California resident in that database and must be made regardless of whether you have proof that this particular person's information was stolen. "Personal information" includes the person's first name or first initial and last name in combination with any of the following: social security numbers; driver's license numbers; and, account numbers and/or credit card numbers together with a password or access code. This rule applies not only to data owned by the company, but data which is leased by the company. This law, unlike recent laws regarding the use of social security numbers over the Internet, applies equally to businesses that have little to no business over the Internet. The disclosure requirement will only apply if a hacker, or other outsider, infiltrates your database as a result of the acts of a disloyal employee or an unreliable third party user of your database, as illustrated in the above-referenced Scenarios.

This code requires prompt customer notification. Notification shall be made by mail, or e-mail, if it is compliant with the federal e-signature law. You may provide notice by posting notification on your website only if the number of people in your database exceeds 500,000, or the cost of mail and/or e-mail notification would exceed \$250,000. You may defer notice when instructed to do so by law enforcement, if, for example, such notification would impede an investigation. As with other violations of California's privacy laws, an injured customer may sue you for related damages and a court may issue an order prohibiting further violation. Unauthorized access to personal information may not only result in the cost and expense of notifying your customers and others of the breach but may result in a class action suit resulting in substantial civil damages.

This legislation and other similar privacy laws should prompt you to commence a review not only of your company privacy policy but to revisit how you protect your customer's information. As most privacy breaches occur because of employee disloyalty or related party negligence, you may wish to revisit your internal privacy controls, as well as your agreements with your third party distributors, vendors and partners. As part of your review, please consider if and how you use personal consumer information in your business. Do you use a social security number to identify your consumer or to provide your customer with web access to their account? Even if you do not do business on the Internet, do you maintain a customer database with personal information? Is that database secure? Have you limited which employee or third party has access to this information? Do only employees with a need to have access indeed have access to private information? Have third party "partners", vendors or distributors not only promised to comply with your privacy policies but also agreed to indemnify and defend you in the event this policy is violated? The time is now to remedy any deficiencies in your policies or agreements.

<sup>1</sup> [Civil Code Section 1798.82](#)

## **ATTENTION: ALL RESIDENTIAL LANDLORDS**

### **60 Days Notice for Residential Tenants**

The California legislature amended Civil Code Section 1946.1 to require a residential landlord to give a tenant 60 days notice of termination if the tenancy is a month-to-month tenancy and the tenant has resided in the property for more than 1 year. By contrast, a tenant continues to be required to give only a 30-day notice to the landlord. Tenants who are on a month-to-month tenancy, who have not lived in the residence for more than 1 year are still only required to receive 30 days notice. There are exceptions to the 60-day notice. These exceptions are:

- You have opened an escrow for the sale of the property
- You, in good faith, intend to live in the property for at least 1 year after the tenant vacates
- You have not previously given notice to the tenant

As an example, you have a tenant who has lived in your rental property for 3 years. The first year you had a one-year lease that provided for 30 days notice. At the end of that lease, you never bothered to have them sign a new lease. The lease has been treated as a month-to-month tenancy since then. You want to let your daughter and son-in-law live in the rental unit at a reduced rent, while they look for property to purchase. Under this scenario, you must give your tenant 60 days notice of termination of the lease. Let's say you did not know about the new law and you gave your tenant 30 days notice. Your tenant responded that you are required to give them 60 days notice. You then provide a new 30 days notice indicating that you intend to live in the property. Your new notice is not effective for two reasons: you are not intending, in good faith, to live in the property for at least 1 year after the tenant vacates; and, you have already served a notice to the tenant. What can you do about this? Plan ahead for a vacancy. Understand that you may have to give your tenant a 60-day notice. Make sure your tenant signs new leases at the expiration of every term, providing for 30 days notice. Hold your breath. While the legislature has provided for a sunset clause (meaning the new statute will expire) of January 1, 2006, the legislature may extend the statute beyond that date.

### ***Landlord's Entry into Rental Property***

Changes to Civil Code Section 1954 further limit a landlord's right to enter a residential rental unit. Among other things, the new section requires, in the absence of an emergency, that notice of an intention to enter the unit be mailed at least six days prior to the entry date.

## WHAT'S NEW AT THE FIRM

**VOGT & RESNICK** has recently welcomed three attorneys to its team:

**Jack Smart** is a member of the million-dollar verdict club and specializes in business and employment litigation. Mr. Smart utilizes a strong business management background in the advisement of our corporate clients, having served as Senior Vice President and Chief Group Executive for Monogram Industries, a NYSE-listed conglomerate, and as President and C.E.O. of Spaulding Composites, Inc., a business he acquired in a leveraged acquisition from Monogram Industries. Mr. Smart is also Certified Arbitrator with a wealth of experience in alternative dispute resolution.

**Patti L.W. McGlasson** has a strong background in business, corporate and securities law, having represented both domestic and international venture-backed and publicly traded companies, ranging from start-ups to exchange-listed issuers. Ms. McGlasson's representative securities and corporate transactions include public, private and internet offerings, as well as mergers and acquisitions for various industry sectors, primarily technology and consumer goods. With a wide range of experience in real estate law, Ms. McGlasson has also represented both borrowers and lenders in real estate-secured transactions and a variety of real property transactions. In addition, Ms. McGlasson is involved in several community development, technology and securities groups, including the Southern California Software Council and Tech Coast Venture Network. She is also a board member and officer of the American Business Women's Association, Orange Coast Express Network.

**Rosa Kwong** is the most recent addition to our team, bringing to the firm a wealth of experience in professional, officers' and directors' liability, and personal injury litigation. Throughout her career, Ms. Kwong has successfully represented a multitude of employers in numerous complex employment-related matters. A graduate of distinction from Hawaii University, Ms. Kwong was also a journalist early in her career and served on the staff of several publications, including the Orange County Register.

## **NEW WITHHOLDING REQUIREMENTS FOR THE SALE OF REAL PROPERTY**

Revenue and Taxation Code Section 18662, has been amended to require a buyer of real property to withhold 3 ½% of the sales price on the sale of any real property in California with a sale price in excess of \$100,000. Prior to this amendment, this requirement was only imposed if the seller was either a non-California resident, or would be a non-California resident after the sale. The amount withheld is immediately remitted to the Franchise Tax Board. While, as the seller, you will not be paying more than the usual amount of tax on such a sale, you will be required to pay it sooner. Exemptions from the withholding requirement include, but are not limited to, the sale of a principal residence, a Section 1031 tax-deferred exchange, a purchase in a foreclosure sale, and a transaction resulting in a loss for California income tax purposes. You can avoid some of these problems by planning ahead. For example, if you know you are planning to sell a vacation home that you do not rent out, you may want to consider limiting your use of that property, renting it out, and taking advantage of a 1031 exchange. Another option would be to sell your primary residence, move into the vacation home, live there, and then sell that property. Choosing one of these methods must first be driven by practicality. To discuss the options available to you and receive further assistance with effective tax planning, please contact this office prior to making a decision to sell your real property.

### **For further information, please contact us at:**

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