

## **Notes from the MAR Legal Hotline**

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### **Q. What is the status of the Massachusetts data security regulations and do they apply to Realtors?**

A. In 2010 Massachusetts enacted comprehensive data security and protection regulations. The regulations apply to any person or business that collects, owns, or licenses personal information of a resident of the Commonwealth, including employees. Personal information includes a person's first and last name in conjunction with their social security number, driver's license number or state issued ID card number, or financial account number including credit or debit card numbers. Personal information does not include information that is lawfully obtained from publicly available information.

### **Q. What do I have to do to comply?**

A. The statute and regulations require persons or businesses with personal information to develop a Written Information Security Program (WISP). The scope and complexity of the document will vary depending on the type of personal information you will keep and the resources you have available. The WISP must identify the measures that will be taken to safeguard both electronic and hardcopy files. For example, the regulations state that the WISP must specify "reasonable restrictions upon physical access to records containing personal information and storage of such records and data in locked facilities, storage areas or containers." Additional information, including sample language for Realtors is posted on [www.marealtor.com](http://www.marealtor.com).

### **Q. What sort of information in a real estate transaction would be considered personal?**

A. It is important to recognize that in some real estate transactions no personal information may be collected by the broker. A common example of personal information would be a personal check from a buyer that includes a bank account number on the actual check. When the broker receives the check or a copy, this means that the broker has now collected personal information and needs to ensure that the information is protected in accordance with the regulations. By keeping the application in a locked file cabinet with limited access or redacting the personal information, the broker has taken one step to comply with the regulations. It is advised that all brokers review what information is taken from customers and clients, regardless of the type of transaction. Knowing in advance what information you collect will help you develop your WISP and remain in compliance. It is also important to review all forms and information that is collected from consumers to ensure that no unnecessary personal information is being collected.

### **Q. Does my office have to meet the same requirements imposed on large investment banks and other major corporations?**

A. No. The Commonwealth's Office of Consumer Affairs adopted a "risk-based" approach that directs a business to establish a written security program that takes into account the particular business's size, scope of business, amount of resources, nature and quantity of data collected or stored, and the need for security. This approach is especially important to those small businesses that do not handle or store large amounts of personal information.

**Q. May I obtain a copy of the new “Closing Disclosure” from my client for my files? Is this personal information that falls under the data security regulations?**

A. On July 7, 2017, the Consumer Financial Protection Bureau (CFPB) released the final rule amending the “Know Before You Owe” or TRID mortgage disclosure rule. As advocated for by NAR, the final rule clarifies the ability to share the Closing Disclosure (CD) with third parties, including Realtors- a victory for real estate professionals nationwide. The CFPB recognizes the CD as a “record of the transaction,” which is “informative to real estate agents and others representing both the consumer credit and real estate portions of residential real estate sales transactions.” It is likely that the CD would be considered personal information under Massachusetts law. This is because the CD asks for the “loan ID number” which falls within the definition of personal information if in fact it is also the loan number for the mortgage. Care should be taken to ensure that all copies of the CD are reasonably secure and protected.