

Lawyers Bound By Federal Statute on Privacy Notices

BY LAZAR EMANUEL

The Financial Services Modernization Act of 1999 (the Gramm-Leach-Bliley Act) requires financial institutions to provide “a clear disclosure to all their clients concerning their privacy policies” and to explain how they share their information about their clients with affiliates and third parties. The Federal Trade Commission, which has the responsibility to regulate under the new statute, has construed the statute to apply to all lawyers who provide “tax related” services. Broadly interpreted, this would include lawyers practicing in the fields of tax law, estate planning, domestic relations and bankruptcy, as well as all lawyers involved in business transactions which may involve tax issues. The FTC’s regulations required all entities subject to the Act to send privacy notices to clients by July 1, 2001.

Under the regulations, a financial institution may share its information with affiliates (e.g., a bank may share its information with an insurance affiliate) and even with third parties which perform services for the institution.

The client may “opt-out” of the information-sharing by notifying the institution by phone or mail that he does not wish information about him to be shared.

Krane Sends Letter to FCC Chairman

Disturbed by the application of the Act to New York lawyers, NYSBA President Steven C. Krane has asked the FTC Chairman to exempt lawyers from the requirement to mail privacy notices to their clients.

In his letter to the FTC, Krane said, “Lawyers have always had far greater privacy protections for their clients...than any privacy practices that may exist in the commercial marketplace. New York rules and regulations governing the conduct of lawyers provide for a greater protection of clients’ personal information and subject a lawyer who violates them to professional discipline, including disbarment. Application of the ...Act to New York lawyers is unnecessary and provides no benefit to the public.”

The letter followed the text of a resolution adopted by the NYSBA Executive Committee at its recent summer meeting.

Krane pointed out that NY lawyers are not free under the New York rules to offer their clients the blanket option to “opt-out” of the rules governing client confidences (DR 4-101). The FTC privacy notices would only “serve to confuse clients...and to dilute the public’s expectation of privacy in their dealings with (legal) counsel.”

Several NY law firms have mailed privacy notices to their clients in response to the FTC deadline.