

MODEL PRIVACY POLICY

Disclaimer concerning the Use of this Model Policy: This model policy is a suggested format with suggested text that Texas REALTORS® may use as a guide to develop an office policy related to maintaining customers' personal information private. The Texas Association of REALTORS® does not represent or warrant that this model policy addresses all items that should be addressed in an office policy or that compliance with this model policy will eliminate any potential responsibility or liability by the company or its agents.

Summary of Applicable Law

When adopting a privacy policy one should consider the following rules and statutes:

- (a) the Fair and Accurate Credit Transactions Act of 2003 and the FTC rules adopted under that Act (16 CFR 682); and*
- (b) Sections 35.48, 35.581, and 35.62, Business and Commerce Code.*

Texas Business and Commerce Code Section 35.581 requires you to adopt a privacy policy if you require a person to disclose a social security number in order to provide goods or services to that person. You should maintain the confidentiality and security of a social security number you have obtained. You may want to maintain the privacy policy in a location that is easily accessible for agents to provide to customers and clients upon request, such as a company website. You do not have to provide a copy of the policy every time you obtain personal information. Instead, you must make it available to any such person upon request.

When drafting your privacy policy five main questions need to be answered.

- 1. How is personal information collected?*
- 2. How and when is the personal information used?*
- 3. How is the personal information protected?*
- 4. Who has access to the personal information?*
- 5. How is the personal information disposed?*

Federal and state law requires businesses to implement proper procedures for the disposal of personal information the business maintains in its records. The law requires the business to take reasonable measures to protect against unauthorized access. Reasonable measures include shredding, erasing, pulverizing, and other types of destruction. Mere deletion of electronic records is not sufficient. The destruction of electronic records must render the electronic records "unreadable or undecipherable."

A business is also required to delete any electronic record that was established when the customer issued a bad check which is later found to be in error. The law applies to any business that accepts checks.

Below are model answers to the above questions that you may include in your privacy policy. Generally, property managers are more likely to require and retain personal information than most other types of real estate licensees, but any real estate office in Texas should give consideration to adopting a privacy policy. You may change the text of the policy to apply to your particular practices and procedures.

Privacy Policy for _____ (Company)

1. What is personal information?

Personal information is:

- (1) information in a consumer report; or
- (2) an individual's first name or initial and last name in combination with any of the following:
 - (a) birth date;
 - (b) social security number or other government issued identification number;
 - (c) mother's maiden name;
 - (d) unique biometric data (fingerprint, voice print, retina image);
 - (e) unique electronic identification number our routing code;
 - (f) telecommunication access devices including debit or credit card information; or
 - (g) financial institution account or information.

A consumer report is a report related to a person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living prepared by or obtained from an agency that collects such information such as a credit reporting agency.

2. How is personal information collected?

This company obtains personal information in the following ways:

- (1) in consumer reports from reporting agencies to which this company subscribes in connection with lease applications, loan applications, or for other reasons that the consumer may authorize this company to obtain;
- (2) in lease applications a prospective tenant completes;
- (3) in loan applications a borrower or buyer completes;
- (4) in other real estate related forms the customer or client completes in or related to a transaction; and
- (5) in tax reporting forms that the customer or client is required to complete and which are given to this company.

Add to or delete from the list to best describe the ways in which the company collects personal information.

When completing the forms required above, the customer or client may send the information to this company by mail, fax, personal delivery, or by e-mail. Customers or clients may occasionally provide personal information to this company or its agents by other means such as telephone calls, fax messages, or e-mail messages in order expedite a transaction in which the customer or client is involved.

3. How and when is the personal information used?

Personal Information from Prospective Tenants: The personal information that prospective tenants provide to this company is primarily used to obtain consumer reports (credit checks). It may also be used to perform background checks and rental history searches. The information in the consumer reports may be discussed with landlords for whom this company manages property. This company also reports information to credit reporting agencies and uses personal information to complete those reports.

Personal Information from Owners of Properties Managed by the Company: When this company acts as a property manager for a property owner, the company uses the property owner's personal information only: (a) to deliver the required management services; (b) to file any required reports with governmental agencies (for example, the IRS); or (c) for other purposes the property owner may authorize.

Personal Information from Clients: When this company represents a person (buyer, seller, landlord, or tenant) in a transaction the agent servicing the client may, on the client's behalf and at the client's instruction, convey personal information he or she provides to the agent to service providers (for example, mortgage lenders and title companies) as those service providers may require for the products or services the client needs or requests. If this company represents a prospective tenant in a lease transaction, the personal information may, on the tenant's behalf and with the tenant's knowledge, be discussed with and provided to landlords or their agents. This company and its agents exercise reasonable discretion when discussing any personal information with others.

4. How is the personal information protected?

Written files in this company are protected under lock and key. *(Describe any additional precautions or make any necessary modifications.)*

Electronic records are protected under an access name and password assigned to persons in this company.

This company and its agents exercise reasonable discretion when discussing any personal information with others and releases personal information to others only as described by this policy.

This company does not permit its employees or agents to make copies of consumer reports or records of insurance claims. The consumer reports retained in the company's files are not to be accessed in the future as a convenience to customers or clients.

The individual agents that work with this company are independent contractors and the agent with whom a customer or client works with may maintain a separate transaction file. The company instructs its agents to not permit other persons to access the personal information in files the agents maintain. The company instructs its agents to protect the personal information in the agents' files in the same manner as described in this policy.

Include additional statements about additional protections.

5. Who has access to the personal information?

The following persons have access to personal information in this company's files:

- (1) the agent or broker who is servicing or coordinating the transaction;
- (2) the office manager to whom the agent reports; and
- (3) the owner of the company.

Property owners for whom the company manages properties do not have access to personal information in the company's files. However, the company and its agents may discuss the information in a tenant's consumer report or lease application with a property

owner. Copies of such information are provided to the landlord only: (1) with the tenant's consent; or (2) if the company ceases to be the property manager and the landlord requests that the files be sent to the landlord, the landlord's attorney, or the new property manager.

Personal information from a buyer, seller, landlord, or tenant may be discussed with others (such as mortgage lenders or prospective landlords) only as is reasonably necessary to negotiate or close the transaction or to provide the services the customer or client seeks from this company.

This company may, at the customer's or client's request, provide personal information to service providers in a transaction such as a title company or mortgage company if it is necessary to expedite or complete a transaction.

If the company is required by law to allow others to access the personal information in the company's files, the company will comply with the law (for example, compliance with court orders, subpoenas, or governmental investigations). The company will also allow law enforcement agencies access to personal information in order to cooperate with such investigations.

Include any specific statements that better describe the company's typical use of personal information and the typical situations in which the company may discuss or share personal information with others.

6. How is the personal information disposed?

This company uses reasonable measures to dispose of personal information. Personal information is usually disposed of by shredding or burning documents, erasing electronic files by means that make the files unreadable or undecipherable, or by eradicating personal information from documents or electronic files in ways that make the personal information unreadable.

Include a statement if the company employs a document and record destruction company.

7. Erroneous Records:

If this company erroneously reports information to a consumer reporting agency, the company will act to correct the information in the company's records and request the reporting agency to correct the information in its records promptly after the company has learned and determined that the report was in error.

If this company maintains an erroneous record that a consumer has issued a dishonored check, the company will promptly delete the record after the company and consumer agree that the information is in error or after the consumer provides the company with a law enforcement agency report stating that the dishonored check was not authorized.

Notice: This company asks any person who provides personal information to this company or one of its agents to identify the information at that time as "personal information."