



CONNOLLY BOVE LODGE & HUTZ LLP
ATTORNEYS AT LAW

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Final Model Privacy Forms Under the Gramm-Leach- Bliley Act

Glen Trudel

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Statutory Authority and Overview

- Forms developed pursuant to Section 728 of the Financial Services Regulatory Relief Act of 2006 requirement
- The new rules amend each of the following regulations implementing the GLBA privacy rules (the “Privacy Rules”):
 - 12 CFR Part 40 (OCC)
 - 12 CFR Part 216 (Federal Reserve Board)
 - 12 CFR Part 332 (FDIC)
 - 12 CFR Part 573 (OTS)
 - 12 CFR Part 716 (NCUA)
 - 16 CFR Part 313 (FTC)
 - 17 CFR Part 160 (CFTC)
 - 17 CFR Part 248 (SEC)

Overview of the Final Model Privacy Forms

- Goal (and mandate) was to create Forms which would:
 - Be comprehensible to consumers
 - Have format and design clarity
 - Contain “clear and conspicuous” disclosures
 - Facilitate easy comparison of sharing/privacy practices between financial institutions; and
 - Be easily readable for consumers
- Forms developed through extensive consumer testing and validation studies

Overview

- Proper Use of Forms constitutes a Compliance Safe Harbor
 - Disclosure requirements under the Privacy Rules
 - Can be used to fulfill affiliate marketing notice and opt-out requirements under the Fair Credit Reporting Act, if applicable
 - But cannot set a time limit on the opt-out and still use the Form—indefinite duration opt-outs only
 - NOTE: Use of model form language does not limit Financial Institutions' ability to share information in accordance with or as permitted by law, despite lack of detailed descriptive language expressly referring to all exceptions
- Must Financial Institutions Adopt the Forms?
 - Use of the Forms is optional
 - Only Safe Harbor in Town

What About the Current Sample Clauses?

- Agencies are Eliminating:
 - Safe Harbor protection for Sample Clauses included in Privacy Rule notices provided after December 31, 2010
 - Transition Period of one year, in effect, for 2010 disclosures
 - Sample Clauses will be decodified completely as of January 1, 2012
 - Guidance (for SEC-regulated Entities)
- So are the Sample Clause Bridges Completely Burnt?
 - No, but users beware

Effective Date

- Final Rule effective as of December 31, 2009
- Exception: Decodification of the Sample Clauses effective January 1, 2012
- One year transition period for notices sent prior to December 31, 2010

The Final Model Privacy Form

- Standardization is Key—4 Versions
 - Model Form with No Opt-Out
 - Model Form with Opt-Out by Phone and Email
 - Model Form with Mail-In Opt-Out
 - Alternative Version of Mail-In Opt-Out Form
- Instructions for Use Included
- Format of Notice—Very Strict Rules
 - Portrait Orientation
 - No model form content on reverse side of mail-in opt-out form

The Final Model Privacy Form

- Format of Notice (cont.)
 - No information other than as specifically permitted may be included in the form or lose safe harbor status
 - No modification other than as described in Instructions or lose safe harbor status
 - Can incorporate notice with other documents, but notice must remain:
 - “Clear and conspicuous”
 - Intact—*i.e.*, customer can retain content
 - Retain page orientation
 - Content, format and order must be preserved

The Final Model Privacy Form

- Printing
 - Font required by law to be “easily readable”
 - Agencies require 10-point font minimum
 - 8pt font when listing financial institutions providing notice outside the four-line limited box, and for revision date
 - “Recommendations” provided as to sufficient “leading” depending on font size, “x height”, *serif vs. sans serif*
 - Double sided printing permissible
- Color
 - White or light colored (*e.g., cream*) paper
 - Contrasting color ink—distinctive, does not detract from readability
 - Logos can be in color

The Final Model Privacy Form

- Logos--yes; Slogans or Other Images—no.
 - Must not detract from readability
 - Must not affect page space constraints
- Jointly-provided Notices?
 - Yes
- Use of the Form by Differently-Regulated Entities?
 - Yes

Page One of the Model Form

- “What?” Box
 - “Social Security number” must be included in 1st bullet
 - Five other forms of information must be provided, taken from a specific list of permissible terms for categories of information
- Disclosure Table
 - “For our affiliates to market to you”
 - The only optional entry in the table
 - May be omitted in specific circumstances
- “To Limit Our Sharing”: Opt-out Options
 - Include only if an opt-out is to be granted; otherwise delete from Form

Page One

- Additional Opt-outs (*i.e.*, beyond Federal requirements) in Model Form
 - Must be provided in the “Mail-in Form” section
 - Specific text provided to cover certain opt-outs
- Contact Information for Questions
 - Number or website is to go to customer service only
- Mail-in Opt-out Form
 - Need not reference “Account Number” if not required, or modify to pick up an opt-out code or similar shorthand for account number

Page Two of the Model Form

- “Who we are” Box
 - Omit if only one Financial Institution providing notice
- “How does ...protect my personal information” Box
 - Extra text (up to 30 words) can be added
- Joint Account Box
 - Omit the question unless granting an opt-out
- “Other Important Information” Box—may only contain:
 - State and international privacy law information; or
 - Acknowledgement of customer receipt form
- “Affiliates” Box
 - Descriptive language with illustrative lists

Other Issues

- Cannot use the Model Form to offer “opt-in” consents
- “Highlighting” Material Changes in Privacy Practices in the Form
 - No--Use revision date instead; cover letter also suggested
- Electronic Delivery?
 - Yes, in either PDF or HTML format
- Other Comments
 - Additional information in the form?
 - No--Provide supplemental materials
 - Can the Form be provided in other languages?
 - Yes

Online Form Builder

- Released on April 15, 2010 by all eight Regulators
- Available at http://www.FederalReserve.gov/BankInfoReg/Privacy_Notice_Instructions.pdf
- Link is posted on all regulator websites
- Can download the form, but not a completed form

Model Form Version 3

Version 3 Model Form for Multiple Ownership Plans

WHAT IS THE PRIMARY OR SECONDARY PURPOSE OF THIS AGREEMENT AND WHY IS YOUR PERSONAL INVOLVEMENT REQUIRED?

The primary purpose of this agreement is to establish the terms and conditions of the ownership of the property. Your personal involvement is required because you are a party to the agreement and your signature is necessary to make the agreement enforceable.

How do you intend to use the property?

The property is intended to be used as a residence for the owner and their family. It is not intended to be used for commercial purposes or as a rental property.

What are the terms of the agreement?

The terms of the agreement are as follows:

- The property shall be owned jointly by the parties.
- The parties shall share equally in the ownership of the property.
- The parties shall share equally in the expenses of the property.
- The parties shall share equally in the income of the property.
- The parties shall share equally in the responsibility for the maintenance and repair of the property.
- The parties shall share equally in the responsibility for the insurance of the property.
- The parties shall share equally in the responsibility for the taxes of the property.
- The parties shall share equally in the responsibility for the other expenses of the property.

What are the conditions of the agreement?

The conditions of the agreement are as follows:

- The property shall be used for the purposes stated in this agreement.
- The property shall not be used for any other purpose without the written consent of the other party.
- The property shall not be sold, transferred, or otherwise disposed of without the written consent of the other party.
- The property shall not be mortgaged or otherwise encumbered without the written consent of the other party.
- The property shall not be used for any illegal purpose.
- The property shall not be used for any purpose that would be injurious to the other party.

What are the consequences of the agreement?

The consequences of the agreement are as follows:

- If the parties fail to comply with the terms and conditions of the agreement, they shall be liable for the costs of the other party.
- If the parties fail to comply with the conditions of the agreement, they shall be liable for the costs of the other party.
- If the parties fail to comply with the consequences of the agreement, they shall be liable for the costs of the other party.

What are the signatures of the parties?

The signatures of the parties are as follows:

Signature of Party 1: _____

Signature of Party 2: _____

Signature of Party 3: _____

Signature of Party 4: _____

Signature of Party 5: _____

Signature of Party 6: _____

Signature of Party 7: _____

Signature of Party 8: _____

Signature of Party 9: _____

Signature of Party 10: _____

What are the terms of the agreement?

The terms of the agreement are as follows:

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- The parties shall share equally in the ownership of the property.
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Signature of Party 3: _____

Signature of Party 4: _____

Signature of Party 5: _____

Signature of Party 6: _____

Signature of Party 7: _____

Signature of Party 8: _____

Signature of Party 9: _____

Signature of Party 10: _____

Model Form Version 4

Version 4. Optional Mail-in Form.

Leave Blank
Off
If you have a joint account, your choices will apply to everyone on your account unless you mark below.

Apply my choices only to me

Mark any/all you want to mail:

Do not share information about my creditworthiness with your affiliates for their everyday business purposes.

Do not allow your affiliates to use my personal information to market to me.

Do not share my personal information with nonaffiliates to market their products and services to me.

Mail To: [Name of Financial Institution], [Address], [City], [State], [ZIP]

- Illustrates that Financial Institution name and address can be situated below Customer's name and address

Questions?

Thank you

Contact Information

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