

IN BRIEF

THIS ISSUE

June 2005

Issue No. 95



PROFESSIONAL LIABILITY FUND
www.osbplf.org

MALPRACTICE AVOIDANCE NEWSLETTER FOR OREGON LAWYERS

DOCUMENT DESTRUCTION

Lawyers have a duty to preserve clients' confidential information, even when destroying files. Generally, the PLF recommends that files be shredded (after the appropriate period of file retention). See PLF Practice Aid *File Retention and Destruction* at the PLF's Web site. Go to www.osbplf.org, select Loss Prevention Material, Practice Aids and Forms, File Management, then *File Retention and Destruction*.

On June 1, 2005, a new law took effect that regulates the disposal of consumer information. The Fair and Accurate Credit Transaction Act (FACTA) Disposal Rule (the Rule) requires any person who maintains or possesses "consumer information" for a business purpose to properly dispose of such information by taking "reasonable measures" to protect against unauthorized access to or use of the information in connection with its disposal. The Rule defines "consumer information" as any information about an individual that is in or derived from a consumer report.

Although the Rule doesn't specifically refer to lawyers, it may be interpreted to apply to lawyers, and the practices specified in the Rule would safeguard clients' confidential information. "Reasonable measures" for disposal under the Rule are (1) burning, pulverizing, or shredding physical documents; (2) erasing or physically destroying electronic media; and (3) entering into a contract with a document disposal service.

Lawyers who advise businesses that either use consumer information in their everyday operations (such as banks, lenders, insurers, auto dealers, realtors, mortgage brokers, and employers) or store consumer reports and information (such as record management and information management companies) need to counsel their clients to implement appropriate document destruction policies to comply with the new Rule.

To read the Federal Trade Commission's November 18, 2004, press release and the text of the Final Rule, 16 C.F.R. Part 682, go to www.ftc.gov/opa/2004/11/factadisposal.htm.

Our thanks to Dee Crocker, PLF Practice Management Advisor, for this tip.

DISCLAIMER

THIS NEWSLETTER INCLUDES CLAIM PREVENTION TECHNIQUES THAT ARE DESIGNED TO MINIMIZE THE LIKELIHOOD OF BEING SUED FOR LEGAL MALPRACTICE. THE MATERIAL PRESENTED DOES NOT ESTABLISH, REPORT, OR CREATE THE STANDARD OF CARE FOR ATTORNEYS. THE ARTICLES DO NOT REPRESENT A COMPLETE ANALYSIS OF THE TOPICS PRESENTED, AND READERS SHOULD CONDUCT THEIR OWN APPROPRIATE LEGAL RESEARCH.