

LEGAL NOTES

FROM THE DESK OF HAROLD CHU

It has become a common part of modern day life to get unsolicited phone calls, e-mail and be exposed to identity theft. There are some things you can do to minimize these everyday nuisances and risks.

Unsolicited phone calls

You can put your name on the "National Do Not Call List". To do so, you can call the National Do Not Call Registry at 1-888-382-1222 or go to the website: www.donotcall.gov.

Spam

If you spend any amount of time on the Internet, it is not uncommon to receive random junk email, also called SPAM. The Anti-Spam Act of 2003 was implemented to address the unsolicited emails we get. Our legal intern, Maile McWilliams, and I discuss this in the article which appears in this newsletter.

Most legitimate retail operations will provide an online means of opting out of receiv-

ing their spam e-mail. It will take some time, but I can tell you from my own personal experience, if you are diligent in requesting that you be unsubscribed from their e-mail list, you should find, in a relatively short period of time, a decrease in the amount of unsolicited e-mail.

Phishing

Phishing is a fast growing form of Internet fraud. Phishing is where one uses a false identity to get confidential information from you. A common phishing practice is to send fake e-mails appearing to come from a legitimate source. It will request information (such as a bank account number and password) or direct you to a fake internet website where this information can be captured.

Phishing often appear as e-mail from a seemingly legitimate source, such as Chase Bank, J. P. Morgan or Bank of Hawaii and other well known financial institutions. These e-mails, however, are not coming from these financial institutions. Legitimate financial institutions do not ask for

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How to Minimize Bad Tenants

Many of our clients are landlords. We are often asked how to minimize undesirable tenants. There is no full proof method. You can, however, reduce the odds of getting bad tenants by doing some homework and by asking for certain information from your prospective tenants.

You must, however, be careful. You cannot ask questions that might be considered discriminatory. For example, you cannot ask questions inquiring or perceived to be inquiring about the applicant's country of origin, race, sexual orientation, religion or familial status. An investigation by the Hawaii Civil Rights Commission can be both expensive and time consuming.

You can, however, do the following:

1. Require **all** prospective tenants to complete a rental application. Do not screen by giving the



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confidential information by e-mail. **Do not under any circumstances provide your account information or any confidential financial information in response to such an e-mail.** The recipient of the email can take that information and use it for improper purposes.

Future Issues

Your FICO score influences the type and the cost of credit extended to you. In the next issue, we will explain what a FICO score is and how to improve your FICO score. We also will be discussing some of the newly enacted laws and their potential impact on you.

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- application to only selected applicants. You may be perceived as discriminating by giving the application to selected prospects.
2. The rental application should ask the prospective tenant to list their references, including the names and contact information of their most recent landlords.
 3. Call the listed references, **especially the most recent landlords.** Be careful as to what you ask. You might consider simply asking if they would rent to this tenant again.

4. Ask the applicant to provide proof of their ability to pay the rent. Ask for a copy of their recent pay stub, recent tax returns or a copy of their credit report. Inquire about the applicant's place and length of employment. The applicant can refuse to provide you this information, but their refusal may suggest a cause for concern.

You cannot discriminate or violate an applicant's civil rights. You are not, however, required to accept tenants who cannot pay the rent. The ability to pay rent should be the factor in evaluating prospective tenants.

BEST DEAL IN TOWN

One Sunday afternoon a couple sees an ad in the paper. They can't believe their eyes. There is a house in the paper for \$1,000 that is in the nicest part of town. We are talking about a Highland Park mansion for \$1,000. They think this has to be a misprint, but decide to call anyway.

They say to the lady who answered their call, "We saw your ad, and thought it was a misprint." She tells them "No, it's not and you are actually the first ones to call."

They decide to go look at the house. They race over as fast as they can. They pull up to the most beautiful house on the block. In front of the house is a fountain that cost at least \$30,000. They ring the door bell and the lady answers. She starts showing them the house. They realize this house is over 5,000 sq. ft. and it is obvious that expense was not a problem in building this house. The house had marble imported from Italy and a chandelier imported from France. The landscaping was breath taking and the house had a great pool and a nice tennis court.

The couple said to the lady, "This is the most beautiful house



we have ever seen, what's the catch?" The lady assured them there was no catch. The couple wanted the house for \$1,000 but was leery of doing the deal. Finally, the lady said, "You seem like a nice couple, so I'll let you know the truth."

She told them, "This house is completely paid for, and not a penny is owed against it. Well, last week I got a call from my husband. He informed me he is leaving me for his secretary. He then told me I could have everything we own as long as he could have the proceeds from the sale of the house. I agreed and he asked me if I could sell the house while he and his girlfriend hung out in the Caribbean."

CAN-SPAM ACT of 2003

By Maile McWilliams & Harold Chu

E-mail has become a popular form of communication because of its speed and accessibility. Last year, it was estimated that nearly 45% of all US citizens had at least one e-mail address. Many businesses and private individuals have used this accessibility as a means to promote their products to the masses. One of the effects is a dramatic increase in the volume of unsolicited commercial e-mail (otherwise known as spam) that Americans receive in their in-box on a daily basis.

It is not uncommon for people to find themselves struggling through many unwanted advertisements including such things as instant win notifications, discount medications and pornography. To help control this rising amount of spam and junk e-mail, Congress took the first step towards regulating unwanted e-mail by passing the national anti-spam law, which took effect on Jan 1, 2004. The "Controlling the Assault of Non-solicited Pornography and Marketing" Act (now known as the CAN-SPAM Act of 2003), was implemented to stop unsolicited e-mail and to punish spammers who adopt fraudulent and deceptive conduct. To view the CAN-SPAM Act, or for more information, go to www.spamlaws.com

Some of the highlights of this Act are as follows:

- Businesses will be held responsible for any commercial e-mail sent on their behalf. If the business knew, or should have known, that their goods or services were being promoted in vio-

lation of the act, and that it could expect to receive economic benefit from the violation and failed to prevent the transmission, they will be held directly accountable for the violation.

- Falsely representing oneself as the registrant or successor to the registrant is prohibited.
- It is unlawful to send spam if the subject heading would most likely mislead a recipient regarding the contents or subject matter of the message. This includes both the from and subject lines. This forces spammers to accurately identify any person who initiated the message.
- All sexually oriented material must carry notice of content in the subject line if the material is displayed upon opening the e-mail.
- Spammers will be punished if they gain unauthorized access to a third party computer for purposes of initiating commercial e-mail messages from that computer.

Violators of the CAN-SPAM Act are subject to a fine, imprisonment or both. Fines are calculated at \$250 per e-mail sent, with a ceiling of \$2 million for most violations and \$6 million for aggravated repeat violations. Prison sentences for most offenses range between one and three years, although it can be in-

creased to five years if it is in furtherance of a felony.

Aggravated violations apply to those who harvest e-mail addresses from websites and newsgroups or generate e-mail addresses by other illegal means. Although Congress has enacted these laws to protect U.S. citizens from a sleuth of unwanted e-mails, there are flaws. The CAN-SPAM Act does not actually prohibit businesses from sending unsolicited e-mail. Spam can still be sent without prior consent from the recipient as long as it contains a functioning return e-mail address, a valid subject line indicating it is an advertisement, and the legitimate physical address of the mailer. Each e-mail must also include instructions on how the recipient can "opt out" of further e-mails. Unfortunately, this can be very frustrating and time consuming, but with persistence, the volume of junk e-mail you receive should diminish.

Unsolicited e-mails are not limited to American companies. A large amount of spam is received from international businesses owned and run from outside of the United States. It is difficult to enforce civil judgments against foreign international businesses.

The act does not create a private cause of action in favor of individuals and businesses subjected to violations of the act. A state Attorney General, however, may enforce the act's provisions when they believe their residents have been threatened or adversely affected by spammers.



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PAINT MY HOUSE

A man was sitting at a bar enjoying an after-work cocktail when an exceptionally gorgeous and sexy young woman entered. She was so striking that the man could not take his eyes away from her. The young woman noticed his overly attentive stare and walked directly towards him. Before he could offer his apologies for being so rude, the young woman said to him, "I'll do anything, absolutely anything, that you want me to do, no matter how kinky, for \$100 on one condition." Flabbergasted, the man asked what the condition was. The young woman replied, "You have to tell me what you want me to do in just three words." The man considered her proposition for a moment, withdrew his wallet from his pocket and slowly counted out five \$20 bills, which he pressed into the young woman's hand. He looked into her eyes and slowly, meaningfully said, "Paint my house."

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