

# **THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT (FACT) AND YOU**

The Fair and Accurate Credit Transactions Act (FACT) addresses identity theft and became effective November 1, 2008. FACT amended the Fair Credit Reporting Act (FCRA) and mandates that financial institutions and creditors develop and implement a written identity theft program. Some clients have asked whether they should be concerned about FACT. While this is an evolving area of law, landlords are not covered by the most onerous portions of the law, but they are covered by less burdensome portions of the law.

The most burdensome requirements of FACT (Section 114) require financial institutions and creditors to be on the alert for “Red Flags” of identity theft. If you are subject to Section 114, you have to develop and implement policies to monitor for and to prevent identity theft. The final rules require each financial institution and creditor that holds any consumer account, or other account for which there is a reasonably foreseeable risk of identity theft, to develop and implement an identity theft prevention program for combating identity theft in connection with new and existing accounts. The program must include reasonable policies and procedures for detecting, preventing, and mitigating identity theft.

Fortunately, at this time, landlords are not subject to the Red Flag rules. The June 2008 FTC Business Alert specifically addressed the question of who must comply with the Red Flag rules. Financial institutions such as banks, savings and loan, and credit unions are covered. Creditors are covered. A creditor is any entity that regularly extends, renews, or continues credit. Accepting credit cards as a form of payment does not, in and of itself, make an entity a creditor. Since landlords do not regularly extend credit, landlords are not creditors under FACT. Specifically mentioned covered accounts include credit card accounts, mortgage loans, automobile loans, margin accounts, cell phone accounts, utility accounts, checking accounts, and savings accounts. Landlords and rental accounts or relationships are not mentioned.

While landlords are not covered by the Red Flag rules of Section 114, landlords

are covered by Section 315 of FACT. This section addresses users of consumer credit reports. Landlords are users of consumer credit reports, and are therefore covered. The final regulations implementing Section 315 provide guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency. The final regulations also require a user of consumer reports to furnish an address, that the user has reasonably confirmed is accurate, to the consumer reporting agency from which it receives a notice of address discrepancy but only to the extent that such user regularly and in the ordinary course of business furnishes information to such consumer reporting agency. The Section 315 requirements apply to state-chartered credit unions, non-bank lenders, insurers, landlords, employers, mortgage brokers, automobile dealers, collection agencies, and any other person who requests a consumer report from a consumer reporting agency described in section 603(p) of the FCRA.

The purpose of Section 315 is to enhance the accuracy of consumer information and specifically to ensure that the user has obtained the correct consumer report for the consumer about whom it has requested such a report. To implement this concept more clearly, the final rules provide that a user must develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it was requested when the user receives a notice of address discrepancy.

This means that you must develop and implement reasonable policies and procedures to verify identity when you receive notice of an "address discrepancy" from a consumer reporting agency in connection with approving residents. However, the regulations strongly imply that you can comply by adopting and using the rules adopted in connection with the Consumer Identification Program (CIP). The CIP rules were adopted in connection with the Patriot Act. This means that you could rely upon your existing CIP policies and procedures to satisfy Section 315 address discrepancy requirements if you apply them whenever you receive a notice of address discrepancy.

If you are unfamiliar with the Consumer Identification Program, required by the Patriot Act, the requirements can be readily found on the web.