



NATIONAL ASSOCIATION OF REALTORS®

*The Voice For Real Estate®*

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October 28, 2009

The Honorable Patrick Leahy  
United States Senate  
433 Russell Senate Office Building  
Washington, DC 20510

Dear Chairman Leahy:

On Thursday October 29, 2009 the Senate Judiciary Committee will mark up S. 139 (Feinstein D -CA), the Data Breach Notification Act of 2009, and S. 1490 (Leahy D-VT), the Personal Data Privacy and Security Act of 2009, bills that will require security policies and procedures to protect personal information and to provide for nationwide notice in the event of a security breach. On behalf of the 1.2 million members of the National Association of REALTORS® who may be required to comply with these proposed policies, I ask you to consider the economic and compliance burden that these requirements would impose on self-employed and small businesses.

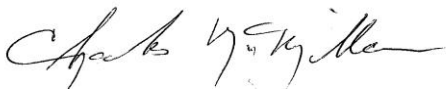
REALTORS® recognize that creating and maintaining sound data security practices is important to their business. NAR has long been supportive of efforts to protect consumers' sensitive personal information. The REALTOR® Code of Ethics and Standards of Practice explicitly acknowledge a REALTOR'S® obligation to preserve the confidentiality of personal information provided by clients in the course of any agency or non-agency relationship - both during and after the termination of these business relationships. REALTORS® support for data protection measures is also bolstered by their day-do-day business activities where they see first -hand the damage that identity theft can do to a family's efforts to rent an apartment or buy a home. However, we believe efforts to further protect personal information must be carefully tailored to balance data security requirements with the needs of small enterprises to conduct their businesses without the imposition of a significant compliance burden.

While we are pleased to see that the scope of the required comprehensive personal data privacy and security program in S. 1490 is limited to be appropriate to the size and complexity of the business entity and the nature and scope of its activities, we remain concerned that certain breach notification requirements contained in both S. 139 and S. 1490 will place an undue burden on our members. For example, the requirement to provide a toll free phone number to contact the business entity will impose a significant cost burden on a small business or self-employed person that is disproportionate to the anticipated harm. For this reason, we believe that notice provisions in each bill should be similarly tailored to reflect the scope and nature of the covered business entity.

In addition, we have particular concerns about the inclusion of paper records in S. 139. As written, S.139 would impose the same notification requirements with respect to paper records as it does for large electronic databases. This could impose considerable burdens on real estate professionals and other small businesses. As with the notice provisions, we believe the inclusion of paper records in any data security bill must be narrowly tailored to reflect the scope of the covered business entity and the actual risk for identity theft to occur. Moreover, there are significant differences between paper and electronic records. Unlike information stolen in a “hack”, a business that loses a paper record often may not know the names of the individuals involved as duplicate records may not exist. Even if a master list exists, the time and effort needed to identify the lost records could be considerable. For this reason, we believe that any bill that moves out of the Senate Judiciary Committee should be limited to electronic records.

We thank you for considering our views on this important matter and look forward to working with you as you address legislation that protects both businesses and consumers.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles McMillan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Charles McMillan, CIPS, GRI  
2009 President, National Association of REALTORS®