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## Employee & Consumer Social Security Privacy Rights



Two new amendments to New York General Business Law Section 399-dd, commonly known as the Social Security Number Protection Law, have been passed for the purpose of further safeguarding employees' and consumers' social security numbers. Signed into law by Governor Andrew Cuomo on August 14, 2012, the first change became effective on November 12, 2012, while the effective date for the second change is December 12, 2012. The two amendments will be codified as Section 399-ddd.

The first change to the law prohibits the hiring of inmates for any position that would give them access to other individuals' social security numbers.

The second change to the law enhances the requirements for safeguarding employee social security numbers while also adding similar protections for consumers. This law prohibits companies from requiring employees and consumers to disclose their social security numbers or to refuse any service, privilege or right to the employee or consumer for refusing to make that disclosure, unless (i) required by law, (ii) subject to one of its many exceptions, or (iii) encrypted by the employer. This law also applies to any numbers derived from the individual's social security number, which means that it extends, for example, to situations where the company asks the individual for the classic "last four digits" disclosure.

The several exceptions may in fact swallow the rule:

- Where the individual consents to the acquisition or use of his or her SSN;
- Where the SSN is expressly required by federal, state or local law or regulation;
- Where the SSN is used for internal verification or fraud investigation;
- Where the SSN is requested for credit or a credit card transaction initiated by the consumer or in connection with a lawful request for a consumer report or

investigating consumer report (in addition to permissible background checks under the Fair Credit Reporting Act and New York law, this provision also may cover corporate credit card programs, frequently used by companies to better manage business expense reimbursement);

- Where the SSN is requested for purposes of employment, including in the course of administration of a claim, benefits, or procedure related to employment, such as termination from employment, retirement, workplace injury, or unemployment claims;
- Where the SSN is requested for tax compliance, collecting child or spousal support, or determining whether a person has a criminal record; and
- Where the SSN is requested by an authorized insurance company for purposes of furnishing information to the Centers for Medicare and Medicaid Services.

Even if the employee or consumer consents and discloses his or her social security number, all the current rules safeguarding the privacy of social security numbers will still apply, and the employer is prohibited from including the number (or any combination or set therein) on any card or tag designed to allow the employee access to facilities or privileges.

Failure to comply with these safeguards generally results in a fine of up to \$500 for the first violation and \$1000 for any further violation. However, to the extent that an employer's practices result in companywide violations and each individual's social security number is improperly obtained, the potential exposure can be significant. There is no private right of action for these breaches; only the Attorney General may enforce Section 399-ddd.

## Lease Interpretation & Transactions in the Digital Age



Recently, an appellate court ruled in our favor reversing the Supreme Court and holding that when the typewritten and printed portions of a lease are in conflict, the typewritten portion will control its interpretation, and will prevail over that which is printed, because it is presumed to convey with more accuracy the latest intention of the parties. In *Rechler Equity B-1, LLC v. AKR Corp.*, 98 A.D.3d 496, 949

N.Y.S.2d 457 (2d Dep't 2012), the termination date of a commercial lease was determined by the terms of the rider providing that the lease expired on a particular date, rather than the contrary provision contained and inscribed in the preprinted portion of the lease. Also involved was the filing of affidavits in conformity with the rules in the digital age of transactions. On a motion, the plaintiff's affidavits to the trial court were rejected because they were mere copies. The appellate court reversed, holding the copies adequate and that the court had to consider them in addressing the merits.

## Adverse Possession



Recently, adverse possession was found by the Highest Court in the State of New York in favor of a beachfront owner who built on property both he and his neighbors thought was his. In the 1960's jetties were built to combat erosion in the town of Babylon. On what he thought was his own parcel, the plaintiff built a boardwalk and dock. However, it was later learned that he actually built over the dividing line between his parcel

and his neighbor's. The neighbor at the time thought it was just the plaintiff's property. Based on long-standing friendships with no one ever contesting plaintiff's ownership, the plaintiff let his next-door neighbor and other neighbors use the dock and boardwalk for years, in fact more years than enough to satisfy the 10-year period applicable to adverse possession. When the next-door neighbor's property was sold and the new owner performed a survey and learned of the mistake, the new owner demanded that the plaintiff remove the encroaching boardwalk and dock. The plaintiff brought an adverse possession action claiming that his rights had ripened into outright ownership over the years. In opinion by the late Judge Jones, the Court reviews in depth the elements needed to for adverse possession and finds them all met here because the occupation was (1) hostile, (2) actual, (3) open and notorious, (4) exclusive, and (5) continuous for the required 10 year period. The court finds only elements (1) and (4) in dispute here, and resolves them in favor of the plaintiff. Hostility need not involve enmity, the court shows, emphasizing the fact that while the plaintiff allowed some friends and neighbors to use the dock and boardwalk, "he did not grant such access to the general public." Thus, the plaintiff had established both adequate "hostility" and "exclusivity."