

# Information Security Breaches: Prevention & Mitigation Strategies

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Presented By:

Robin Campbell

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Crowell & Moring LLP

# SETTING THE STAGE

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- **85% of companies surveyed had a data breach involving the loss or theft of customer, consumer, or employee data in 24 months preceding survey (Ponemon Institute, 5/15/07)**
  - 81% of such instances required notification
  - 57% of respondents had no incident response plan
- **Cost of security breaches**
  - \$99 per compromised data record (Ponemon, 10/25/06)
  - TJX breach of 46 million credit/debit cards: \$1.7B estimate (BNA, 4/9/07)



# STATES WITH NOTIFICATION LAWS

<ul style="list-style-type: none"><li>▪ Arizona</li><li>▪ Arkansas</li><li>▪ California</li><li>▪ Colorado</li><li>▪ Connecticut</li><li>▪ Delaware</li><li>▪ District of Columbia</li><li>▪ Florida</li><li>▪ Georgia</li><li>▪ Hawaii</li><li>▪ Idaho</li><li>▪ Illinois</li><li>▪ Indiana</li></ul>	<ul style="list-style-type: none"><li>▪ Kansas</li><li>▪ Louisiana</li><li>▪ Maine</li><li>▪ Maryland</li><li>▪ Massachusetts</li><li>▪ Michigan</li><li>▪ Minnesota</li><li>▪ Montana</li><li>▪ Nebraska</li><li>▪ Nevada</li><li>▪ New Hampshire</li><li>▪ New Jersey</li><li>▪ New York</li><li>▪ North Carolina</li></ul>	<ul style="list-style-type: none"><li>▪ North Dakota</li><li>▪ Ohio</li><li>▪ Oklahoma</li><li>▪ Oregon</li><li>▪ Pennsylvania</li><li>▪ Rhode Island</li><li>▪ Tennessee</li><li>▪ Texas</li><li>▪ Utah</li><li>▪ Vermont</li><li>▪ Washington</li><li>▪ Wisconsin</li><li>▪ Wyoming</li></ul>
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# KEY REQUIREMENTS

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- **Notification in the event of a breach**
- **Definition of personal information:**  
**First name or initial and last name, plus**
  - SSN
  - DL number or state ID number
  - Account number, credit or debit number plus security code, access code, or password

# “PRE-BREACH” REQUIREMENTS

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- **Similar to HIPAA Security Rule requirements**
- **Reasonable and adequate security procedures**
- **Contractual safeguards for transfers**
- **Effective and timely document destruction methods and policies**
- **Encryption for transfers**

# ENFORCEMENT THREATS

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- **State Attorneys General**
- **Civil Litigation**
- **FTC Enforcement**

# PREVENTION & MITIGATION STRATEGIES

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- **Inventory personal information**
  - What do you have and where is it?
- **Assess vulnerability to breach**
- **Benchmark current security against new legal requirements, FTC guidance**
- **Consider alternative use or elimination of personal information**
  - Change/discontinue use of SSN
  - Encryption



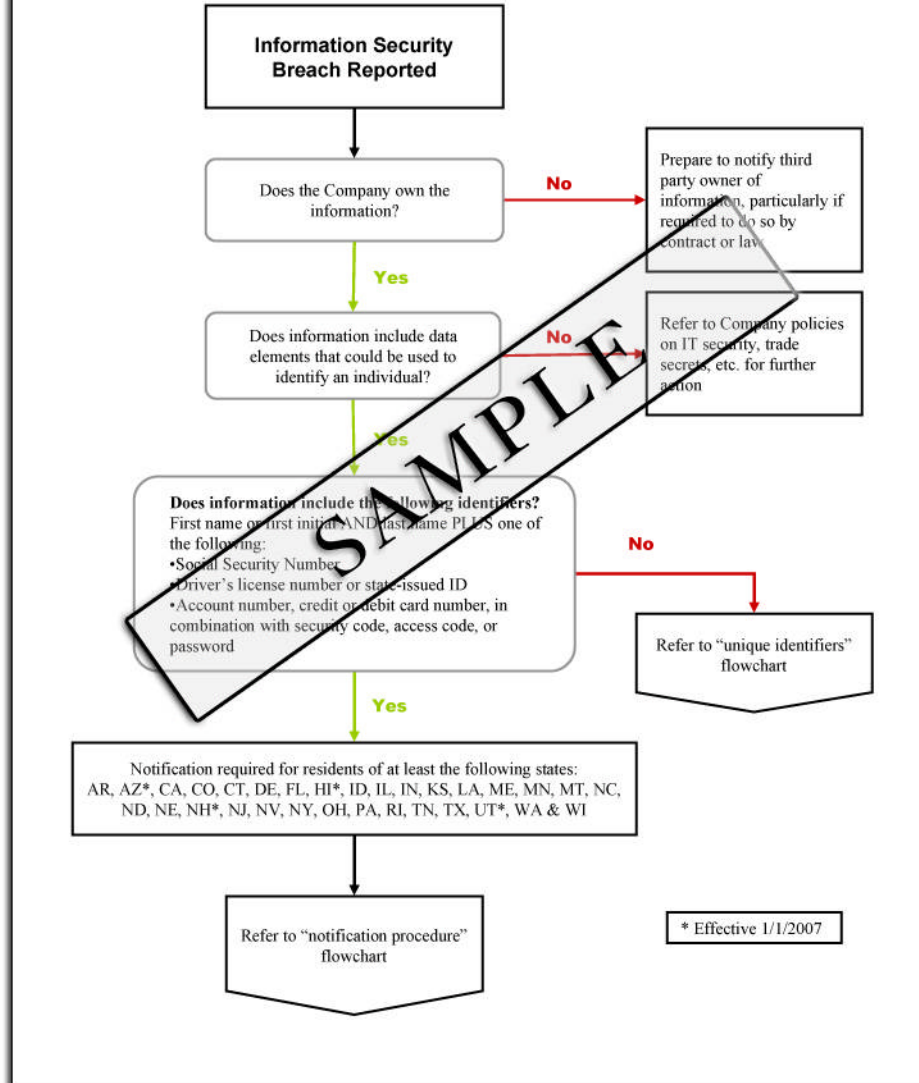
# PREVENTION & MITIGATION STRATEGIES

## (cont.)

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- **Identify response team – IT, Legal, HR, Public Relations/Communications**
- **Develop template notification form**
- **Prepare templates for injunctive relief if necessary**
  - Personal information that might constitute trade secret or confidential business information, e.g., HR database or executive compensation information

## Security Breach Flow Chart



## STRATEGIES (cont.)

- Develop Emergency Response Plan
  - Consider flow chart
  - Assign tasks
  - Define “breach”
  - Anticipate contingencies

# PREVENTION & MITIGATION STRATEGIES (cont.)

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“HIPAA-esque” measures:

- Limit access to personal data
- Utilize adequate administrative, technical and physical security safeguards
- Require adequate security of third parties through contract
  - Update existing business associate agreements?
  - Does it include a notification requirement?
- Use intrusion-detection technology to rapidly detect breach
- Dispose of personal information in an effective and timely manner

# PREVENTION & MITIGATION STRATEGIES (cont.)

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- Develop contacts at credit monitoring agencies
  - Equifax
  - Experian
  - TransUnion
  
- Train, Train, Train, not just the law, but recognizing suspicious activity and how to protect your organization from a breach

# QUESTIONS?

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Robin Campbell

(202) 654-6732

[rcampbell@crowell.com](mailto:rcampbell@crowell.com)