

Does My Community Association Need a SOCIAL MEDIA POLICY?



By Jonathan H. Katz, Esq.



"The problem with internet quotes is that you cannot always depend on their accuracy."

– Abraham Lincoln

While social media can be an informal and inexpensive way for community associations to increase information and engagement among their residents, association boards must be wary of potential pitfalls and legal risks if that social media presence is poorly managed. Directors or trustees of an association have a fiduciary relationship with both the association and its members. That fiduciary relationship requires adherence and compliance with the association's governing documents and the law, and the directors must act in good faith and promote the health, safety, and welfare of the entire community. Adopting a social media policy can allow an association board to fulfill that fiduciary duty

in order to control and monitor online content, minimize abusive practices, and — most importantly — protect the association from possible liability.

Social media can encompass a multitude of online activities, including websites and blogs, online newsletters and e-mail blasts, and/or the use of other, more well-known platforms like Facebook, Nextdoor, or Twitter. All of these forms of social media can facilitate communication between an association and its residents, provide real-time updates, and offer the ability to contact the board or management to report any issues. However, facilitating such communication can also open the door for abuses, like defamation, invasion of privacy, and cyberbullying.

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As such, developing a clear, comprehensive, and formally documented social media policy for your association is a necessity. With that backdrop, here are some best practices that an association board should consider before creating a social media presence.

Creating a Social Media Policy

1. Have a Plan – Before jumping headfirst into developing a website or creating any form of social media, boards need to decide the association’s goal for going online. The short answer may be to create a quick and easy avenue to disseminate relevant information and important updates to the community regarding the business of the association. However, going online just for the sake of being online is a recipe for disaster. Thoughtful consideration should be given to what the association wants to convey and needs to achieve with its online/social media presence.

Further, not all social media platforms are useful for every audience. It may be useful to survey the association’s

residents to determine how they would like to receive information or interact with the board, management, or other residents. In some cases, a members-only website may be the best way to convey information while in other associations a private Facebook group may be preferable to the residents. It may also be that e-mail blasts or text messages are favored over social media for important updates dealing with association business.

2. Protect/Promote the Association’s Reputation – A good social media policy will set clear parameters and spell out what is and is not appropriate for associations to post. Generally, the policy will state that members should not write anything they would not want disseminated to the general public. The best social media policies have more “dos” than “don’ts.” They have clear guidelines to help members understand ways they can use social media to help achieve the association’s goals.

When it comes to personal social media use by board members or residents, controlling what may be said is next to impossible. However, comments by individual board members might be construed as representing the board’s position or undermine previous decisions. Board

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members posting on social media should be reminded of their fiduciary duty to the association and, for those board members who sign confidentiality/code of conduct agreements, requirements regarding social media posting should be worked into those documents. In addition, educating board members on how comments on their personal social media accounts can have real-world consequences for them or the association is an important part of this process and should be discussed with the association's management and legal counsel.

3. Control and Limit Content – Information published on either an association's website or other forms of social media should be controlled by the board and limited in scope. Content should also be reviewed not

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just for good grammar, but also for tone and to guard against privacy issues and appropriateness. Content should benefit the community and the residents but should be careful not to create an opportunity for people to air their grievances about the association, the board, or their neighbors. While a moderated "bulletin board" to post a community calendar, rele-



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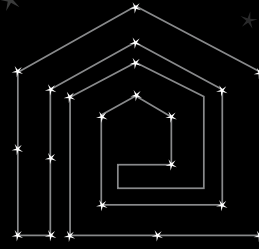
vant information, items for sale, etc., may be both desired and beneficial, this information should flow through a designated contact person and owners/residents should not be allowed to post directly to the website.

The board must also consider what information should be made public and what information should be kept private. An association website will be available for the whole world to see, so consideration should be given to creating a designated "owners-only" area that requires a username/login and a password for access. This

private section serves two purposes: (1) it keeps certain information, such as meeting minutes, budgets, committee forms, from the general public; and (2) it allows the association to keep track of who is viewing the information and can provide an avenue for owners to agree to an Acceptable Use Policy (more on this later).

Also, another issue to consider is a second level of private content, which is specific to each individual owner. This content, which may consist of an owner's account history, vehicle, banking, or other Personally Identifiable Information ("PII"), must be kept confidential and every possible precaution should be undertaken to protect this information. It is recommended that if an association is considering maintaining such PII on its

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website, that the association use a qualified, professional management company or a third-party vendor that specializes in this type of information technology and can provide appropriate security measures and support.

4. Monitoring Content – If an association does allow for owners/residents to have some capacity to post on its website or another form of social media, it is highly recommended that the association create a protocol for monitoring what is being posted. Monitoring must be done on a consistent and timely basis by a designated moderator(s). As noted above, the association should require that every person who wants to post agree to an Acceptable Use Policy (“AUP”), which would require (among other things) that:

- (1) Posting of defamatory, harassing, discriminatory, or otherwise threatening comments and material is prohibited;
- (2) Posting of obscene, hateful, violent, unlawful, or otherwise illegal comments and material is prohibited; and

(3) The association reserves the right to remove any posts that it deems to violate the AUP and/or reserves the right to terminate access to any person who does not abide by the posting policy.

5. Engage the Community — If a board is prepared to take on the risks that social media presents, the association should do its best to reap the benefits that come along with a positive social media presence. Engagement of the residents requires consistency and content variety. Content should be aimed to engage residents with information that matters to them at regular intervals. Along with a strong blend of administrative information (meeting dates and times, policy updates, etc.), the association should also try to work in other information (community projects, resident accomplishments, and local events).

A Note About Cyber-Liability Insurance

While this article does not deal with the multitude of insurance issues that can arise regarding the use of websites and other social media, associations using social media should speak with their insurance professionals

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regarding their coverage and available policies, including both Directors & Officers as well as Cyber-Liability coverage. Specifically, Cyber-Liability Insurance should cover employee technology use, possible data breach, and other potential liability that may arise from an association's online presence.

Conclusion

Social media is fraught with risk for associations and association members. As discussed above, creating a social media policy can allow an association board to balance the ability to effectively communicate with its residents while also maintaining control and monitoring online content to minimize abusive practices and protect the association from possible liability. And as always, before entering the social media world association boards should seek the advice of legal counsel. Counsel will be best suited to advise and assist the board with drafting, adoption, and implementation of a comprehensive social media policy. ■

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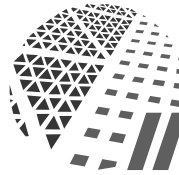
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