**To Tweet or Not To Tweet?**

**Measuring the Cost of Social Media for Community Associations**

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In an increasingly digital world, many homeowner’s associations have already eschewed traditional newsletters and bulletin board postings in favor of slick, centralized Web sites that allow them to instantly communicate with their membership. As the popularity of social networking sites like Facebook and Twitter soars, some associations have already begun utilizing these platforms to reach out to and engage homeowners. While such methods may be a valuable community outreach tool, problems may abound if an association fails to create a solid social media policy before taking to the Internet unfettered.

For example, consider the potential liability to the association if a director tweets a libelous or offensive statement, releases private information about a homeowner in a blog post, or plagiarizes content (unintentionally or otherwise) from another source. Similarly, imagine the claims against an association if harassing material is posted by a homeowner about another member on the association’s Facebook page. To lessen this potential liability, associations should first create a social media policy, preferably with the assistance of counsel, that addresses who may view and post on the site and outlines the type of communications the association will allow. The policy should also explicitly state that the board of directors for the association may remove posts (i.e., those which contain false, offensive, or potentially libelous statements, or which constitute harassment).

Once an association has created its social media policy, it may then consider how to use social media platforms to customize who may view posts. Twitter and Facebook allow such customization, which may be useful if the association wishes to post information such as meeting minutes or annual disclosures that are typically available only to members. However, if the association wishes to take advantage of such customization features, a member of the Board or a committee member should be charged with the task of regularly reviewing the association’s page to ensure access is granted (via a “friend request” or otherwise) to eligible members. Associations may also wish to take advantage of Facebook’s privacy settings, which enable very limited profile viewing for users who are not “friends.”

An association may elect to simply use social media as a method to passively convey information without engaging in dialogue with homeowners or other social media users. If an association chooses to prohibit owners or “friends” to post or comment on HOA posts, it has arguably lost the value of social media to mobilize and engage communities in discourse. The upside to this, however, is that the association has drastically reduced its potential liability if defamatory or offensive material is posted by another user. If an association chooses to make its Facebook page or blog “read-only,” it should encourage homeowners who wish to comment on material to attend the next board meeting to discuss their concerns.

On the other hand, if an association views social media as a tool to promote interaction and dialogue amongst its members, it should appoint a moderator to review all Internet communications and comments and ensure that objectionable material is not posted by an association representative, agent, or by homeowners. If the association chooses to allow posts by friends, it should carefully consider whether it will allow negative comments about the association and its governance of the community, and should establish criteria for the removal of such posts. However, the association should confer closely with legal counsel to ensure that such policies are fair, reasonable, and nondiscriminatory. In either scenario, the board of directors should decide on one person who will update and post on behalf of the association to ensure that communications are consistent and closely monitored.

Finally, before engaging in social networking, an association should consult with its insurance carrier or carriers to determine whether the applicable policies would cover claims of discrimination or defamation relating to the association’s use of social media. Additionally, the association should bear in mind that many D&O policies expressly exclude claims for defamation, discrimination, and invasion of privacy, and for emotional distress damages arising from these types of claims. While Section 230 of the federal Communications Decency Act precludes liability in the defamation context for electronic information posted by third parties, this statute simply provides a defense to such claims. Therefore, if a homeowner elected to sue an association for damages arising out of a third party’s post on the association’s blog or Facebook page, the association would still need to defend the lawsuit, and should be cognizant that its insurer may not afford coverage for that defense.

In conclusion, associations who wish to take advantage of social media to promote community involvement and transparency in association business should consider the following additional safeguards for possible incorporation into a social media policy:

* Keep it brief. Don’t editorialize or conduct business via your online platforms (which is expressly prohibited by the Davis-Stirling Act). Rather, use social media as you would an association newsletter: to convey simple, straightforward information and to encourage homeowners to become more involved in their community.
* Prohibit profane language or disparaging terms or comments relating to individuals, entities, or to a particular protected group or class.
* Prohibit posts which disclose private information about members or entities.
* Prohibit members from using association social media platforms to solicit business.
* Use disclaimers to shield the association from liability for inappropriate content and to notify users that the views expressed on the page or platform do not represent the official position of the association.
* Reserve the right to unilaterally delete content from the site and to deny access to users who violate the site’s terms of use.
* Explicitly state that the page is the official Facebook/LinkedIn/Twitter/blog of the association, and that any other pages are not endorsed or maintained by the association.
* Utilize privacy controls to limit who may view and post to groups or pages maintained by the association.
* Don’t allow anonymous posting. Any user who wishes to comment on a blog post or write a Facebook comment should have a valid account with the applicable platform.
* Set up blogs or other platforms so page administrators must review and approve all comments before they are posted.