

## MARKETING THROUGH SOCIAL MEDIA: DO YOU UNDERSTAND THE RISKS?

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This article originally appeared in the April 2010 edition of *New Jersey REALTOR®*.

It seems as though everybody is blogging or otherwise using social media to market themselves. Why should you be any different? Marketing through social media can be a cost effective replacement or supplement to newspapers ads, postcards and other mailings. It doesn't cost you anything but time and you can use it to promote open houses, get clients, solicit new agents for an office, and stay in touch with agents who currently are in your office.

Whether you are a fan of Facebook, LinkedIn, RealTown, Twitter or any other website for blogging, there are significant legal issues that you, as a broker or a salesperson, must keep in mind in order to avoid a lawsuit or sanctions being imposed by the New Jersey Real Estate Commission (the "Commission") or some other agency.

### WHAT IS SOCIAL MEDIA?

Social media is an extremely broad term that can relate to any online communications, which could include blogging, emails, or any website that allows for interfacing. The National Association of REALTORS® ("NAR") has defined "using social media" generally as meaning "posting or uploading content to all types of interactive electronic communications including but not limited to websites, weblogs, social networks, discussion boards, and listserves."

### LEGAL IMPLICATIONS OF SOCIAL MEDIA USAGE

Any time you use social media as a marketing tool, there are numerous legal risks that are involved. Such marketing may include merely referring to yourself as a REALTOR® or real estate licensee, giving real estate advice, advertising or otherwise marketing properties, soliciting buyers or sellers, or simply providing information that relates to your role as a real estate licensee.

For example, whenever you undertake such marketing, you should ensure that you are fully complying with the Commission's regulations concerning advertising and treat such communications in the same way you would if you were speaking to someone face-to-face, including avoiding any misleading or deceptive comments that could trigger a violation of the Consumer Fraud Act, (and its mandatory award of treble damages and attorneys fees). For example, if you are providing information about a house in a blog, make sure that you not only disclose all material information pertaining to the physical condition of the property as required under the Commission's regulations but that you also clearly identify yourself as a salesperson, broker-salesperson or broker and indicate your regular business name, as well as the regular business name of the individual, partnership, firm or corporate broker through whom you are licensed in the form required by the Commission.

In addition, NAR's Code of Ethics fully applies to social media usage pursuant to Standard of Practice 1-2. This includes but is not limited to statements that you might make in a blog about properties and other agents. For example, Article 2 of the Code provides that "REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction...." In addition, Article 15 provides the following prohibition against statements concerning competitors: "REALTORS® shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices."

You also should be aware that the term "REALTOR®" is trademarked. As a result, NAR has indicated that certain uses of REALTOR® are acceptable as a name under which you blog, such as when you use it in connection with your actual name (e.g., janesmithrealtor, realtorjsmith, realtorjanechicago) but that it is unacceptable to use REALTOR® in connection with fictitious names (e.g., chicagorealtor, realtormom, hotshotrealtor, cyberrealtor, janechicagorealtor).

Moreover, there are numerous other legal issues that can arise from blogging:

- **Defamation** - In addition to violating the Code of Ethics with regard to comments about other agents, you should be careful not to make any unsubstantiated statements about other licensees, buyers, sellers, or anyone else since you could be faced with a defamation lawsuit. Even if you think you are anonymously posting the statements under a pseudonym, it might be possible for the defamed person to find out who posted the slanderous remarks.
- **Testimonials** - The Federal Trade Commission passed regulations that went into effect December 1, 2009, requiring that all testimonials or other endorsements reflect the honest opinions and true experience of the endorser. If the endorser is being paid, whether through free products or monetary compensation, or there is some other material connection between the advertiser and the endorser, this must be disclosed. Fines can be imposed for up to \$11,000 per violation and the violator could be required to reimburse consumers for all financial losses stemming from the inappropriate testimonials.
- **Identity Theft** - Not all people who you admit into your circle of virtual friends really will be interested in your marketing efforts. Be careful what you include in your blogs since the information may very well be viewed by people who are seeking to steal your identity or may be disseminated beyond your friends to other people who are seeking to steal it.
- **Broker Liability** - If a salesperson posts a blog that violates any law, a broker may very well be liable for that blog. Brokers therefore should have reasonable policies in place that are uniformly enforced concerning salespeople using blogs.
- **Creation of Client Relationships** - Be careful if you are soliciting buyers and sellers through a blog. You should make sure that you timely provide a Case Information Statement to a potential client and otherwise comply with all Commission regulations concerning such buyers and sellers.
- **Discrimination/Harassment** - Brokers should have written office policies prohibiting any discrimination or harassment and immediately should investigate and stop any discrimination or harassment, whether in a blog or otherwise.
- **Invasion of Privacy** - The law is evolving with regard to whether or not an employer has any right to review blogs of employees. This issue may depend upon whether or not a computer, blackberry or the like supplied by the employer was used. Courts also have looked at whether or not the employer obtained the password for a blog from the employee through any type of coercive means.
- **Antitrust** - As with any form of communication, you should avoid discussions in blogs with other licensees about commission rates or other business terms that potentially could be construed as attempting to conspire or agreeing to fix such rates or terms, which would violate antitrust laws.

### ENJOY BLOGGING BUT AVOID THE RISKS

Social media can be a very powerful marketing tool but you have to assume that the entire world will read your blog, including other agents, brokers, buyers, sellers, the Commission, etc. Even personal postings that have nothing to do with real estate might be used by buyers, sellers and potential employers in the future to decide whether or not to hire you. As a result, be careful what you post. Indeed, if the posting is in any way real estate related, then you must be even more careful to comply with all of the rules and regulations of the Commission and other State and Federal agencies, as well as NAR's Code of Ethics.

In order to ensure such compliance, brokers should have a written policy concerning the use of social media by their salespeople. It is recommended that the policy be signed by the broker's agents at least once a year, be included in the office personnel handbook, and be discussed at least once a year in an office meeting. The policy also should be consistently enforced, including but not limited to disciplinary action for violating the policy.

The bottom line is **BLOG BUT BLOG RESPONSIBLY!**

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