



NAVIGATING SOCIAL MEDIA LIABILITY



WHEN TO GET INVOLVED AND WHY

SANDRA L. GOTTLIEB, ESQ., CCAL
SwedelsonGottlieb

Agenda

- Social media presence for Associations
- Potential legal issues
- Responsibility for maintaining these online resources
- Social media issues (*e.g.*, handling Facebook, NextDoor, Instagram, etc.)
- Balancing potential benefits with potential liability issues
- Final words of caution

Issues WITH SOCIAL MEDIA and Considerations

- Does posting on social media constitute a statutory notice?
(e.g., as an announcement or on Facebook?)
 - Can this qualify as “general notice” as contemplated in the Civil Code?
 - “Posting of the printed document in a prominent location...”?
 - This is questionable, but we think probably not (at least not yet) because the Code says “printed”

Issues WITH SOCIAL MEDIA and Considerations

- What about meeting notices through email?
 - If members consent to individual delivery via email, then notice of meetings may be sent via this method
 - But is it really worth it if everyone in the community has not done so? This could end up being more work and being more confusing than it is worth as you will need to document who needs paper notices and how to confirm such is accomplished
- Consider a combination of approaches
 - Posting of a “general notice” or mailing AND posting to the web portal for ease of access and convenience

Legal Considerations



Potential Legal Issues

- There are strict legal requirements in the Civil Code regarding notice for meetings and other matters
 - § 4040 — Individual Notice
 - § 4045 — General Notice
- Failure to comply with statute could expose the Association and Board to liability

Potential Legal Issues (cont.)

- The Board needs to be very careful what it puts its name on!
 - Anything put up on a website or elsewhere online could easily be interpreted as coming from the Board/Association
 - *Remember: If you touch it, you own it!*

Potential Legal Issues (cont.)

- There is the potential for abuse by members of online social media
 - Social media can quickly turn into a place for disparaging comments and can spark disputes
- Is the Association responsible for monitoring what is posted and who posted the communication?
- Is knowledge by one Board member imputed knowledge to all Board members?
- If a dispute breaks out, is the Board obligated to step in, or is this a neighbor to neighbor dispute?

Potential Legal Issues (cont.)

- Offensive, defamatory, or harassing statements against the Board and management can be a serious issue
 - Remember, Associations/Boards have a duty to ensure a hostile/harassment-free working environment for employees and vendors, including their community managers!
- What about defamatory statements about Board members, or other members in the community?
 - The courts have held that Directors are semi-public figures and thus there is a high threshold for establishing defamation. Directors need to have thick skin.

Potential Legal Issues (cont.)

- But what about other members in the community?
 - It is possible that the Association could get dragged into a dispute between two owners because of statements and behavior online
- What about confidentiality issues?
- It is possible that confidential information may be transmitted to or available on social media, etc.
 - Privacy issues
 - Personal information
 - Information related to violations or delinquencies

Potential Legal Issues (cont.)

- A web portal will allow for access restrictions and prevent dissemination of things that you would not want any third party to have access to
- The Association, if providing such website services, would have a *duty to ensure that it takes reasonable measures to ensure privacy and restrict access/Red Sky laws*
 - Business judgment rule/reasonable person standard
- All of this is to say that there are serious considerations that need to be weighed by Boards regarding online resources
- Boards may want to consult with legal counsel about potential issues and liability before taking steps to create an online presence

Responsibility for Online Resources



Who is Responsible?

- Who is responsible for maintaining the web portal? A Board sanctioned online resource? A non-sanctioned online resource?
 - Is this the duty of the Board, management or a particular Director?
 - Should this be something that is handled by a committee?
 - What are the safeguards that will make sure content is relevant, appropriate and risk free?
- What happens if there is no one on the Board who is tech-savvy, or if no one is willing to undertake such responsibility?
 - Is this something that can be done by the manager?
 - How about a member in the community, either as a volunteer or in exchange for payment?

Social Media Issues



Social Media

- Maintaining a web portal is one thing, but should the Association maintain social media accounts as well?
 - Facebook page? Instagram?
- What about services like Nextdoor.com?
 - Should the Association be using or monitoring such services, or is it just asking for trouble by doing so?
 - Remember use of Nextdoor.com can be seen by non-Association members
- Is this part of the Association's brand/image?

Issues with Social Media

- One of the biggest issues Associations have to deal with relating to social media are claims of harassment and defamation
- How to address?
 - As discussed previously, the courts say that Boards need thick skin
 - Boards/Associations probably shouldn't be involved with social media for this reason
- Is this realistic going forward?
 - Are we moving to a time when everything is digital and Association involvement is unavoidable?

Nuisances?

- Excessive postings on social media
 - Is cyber bullying a nuisance?
- Can the Association enforce such actions as violations of the nuisance provisions of the governing documents?
 - Depending on the actual language in the governing documents, this may be a legitimate concern
 - Could this potentially be an off-site nuisance that the Association is not responsible for? How would you make this determination?
 - What if a person is on his or her phone sitting in the Association common areas posting comments/pictures that may be a nuisance? What about streaming a Board meeting?

Further Concerns with Social Media

- Is there a difference between an Association-maintained website and other social media in terms of responsibilities?
- What happens if someone posts unflattering pictures or comments on social media (such as Facebook, Instagram, or Yelp) and tags the Association?
 - Is this defamation? Are there potentially recoverable damages to the Association?

Further Concerns with Social Media

- Is there anything the Association can do to stop this?
- Depending on what is said and where, this could potentially and seriously hurt the image of a community
 - Whether or not the Association can really do anything about this is another story
- What if someone posts disparaging comments about management on a social media site?
 - Does the Association have a duty to take action?
 - What happens if the Board does not know about it?

Nextdoor.com

- As you might expect, this service presents a number of issues for Associations, not just yours!
 - One of the main concerns is that it includes people in your “neighborhood”, which generally includes a geographic region that may include a number of Associations
- Obviously, there are concerns about discussing Association business with non-members
 - Because of this over exposure to liability, your Boards should make a conscious decision for or against involvement
- Whether individual owners want to use it is up to them; but not individual Board members

Social Media Unknowns

- As you can see, we have more questions than answers at this point
 - Many of these questions do not have answers and have not yet been addressed by the courts or by statute
- However, as time goes on, these are potential issues that Associations, Boards and managers may face while using social media

Decision not to be Online

- For some Associations, especially those without much member involvement, or where the Association has few responsibilities, an online presence and the potential issues it presents may simply not be worth it
 - Legal issues
 - Additional costs
 - More complexity
- *Remember, good old fashioned paper and snail mail works just fine, and people can still pick up the telephone and actually talk to a person*

Final Words of Caution



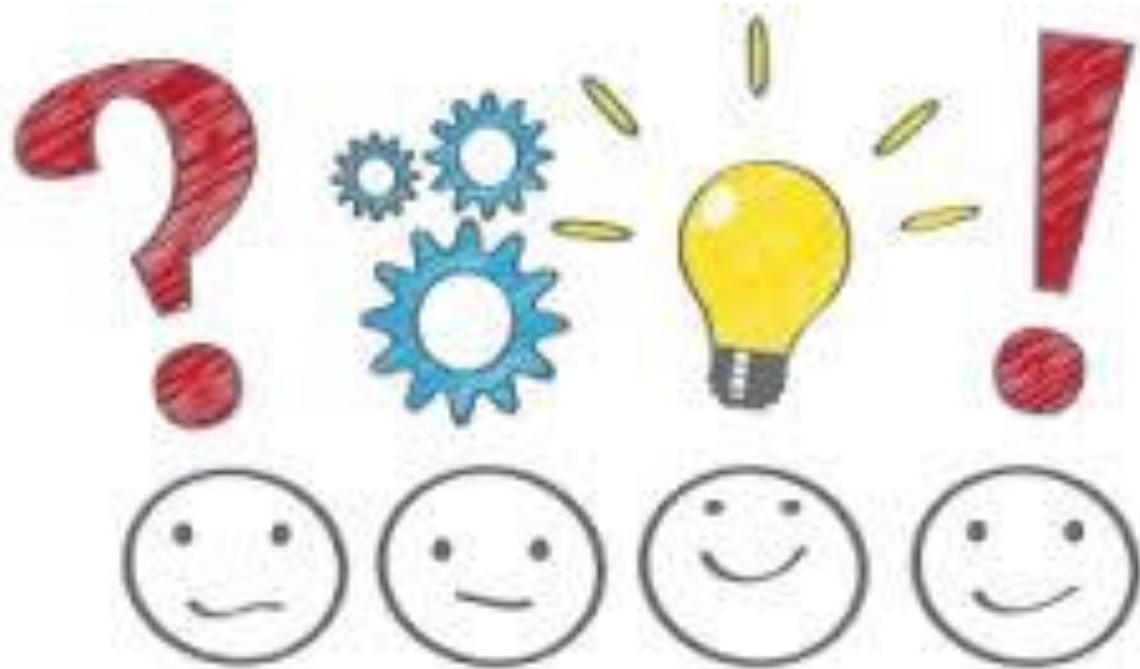
Final Considerations

- While an online presence can offer many great benefits to members and Boards, there are a number of issues that should be carefully considered before taking action
- This is not something that should be done half-heartedly
 - A poorly maintained and unmonitored online presence may reflect poorly on the Board, management, and the Association as a whole

Final Considerations

- It is important to remember that statutes, regulations, and even case law are often far behind technology
 - Just because there's technology out there that can make things easier, it doesn't mean that it can or should be used for an Association!
- Always be sure to consult with legal counsel on potential legal issues and pitfalls before making any big decisions regarding technology and the Association's internet presence
- If you are a Board member, and you're posting on Nextdoor, you are not posting as a homeowner. You never lose your Board status. Remember your Board fiduciary responsibilities.

Questions?





Sandra L. Gottlieb, Esq., CCAL
SwedelsonGottlieb
350 Sansome St. #300
San Francisco, CA 94104
415.762.1889
slg@sghoalaw.com
www.lawforhoas.com