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Official Publication of the Newport Beach Association of REALTORS®

401 Old Newport Blvd., Ste. 100 Newport Beach, CA 92663 (949) 722-2300

The purpose of the Newport Beach Association of REALTORS® is to be a service and support organization through active participation in establishing programs and services that will enhance and promote the successful business endeavors of its members. With integrity and competence, it will provide a positive link to the local community by cultivating goodwill and protecting the individual rights to own, transfer and use real property.

Editor:

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Ned Foley, Foley Publications, Inc.

Advertising information:

1-800-628-6983

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The Coastal REALTOR® News

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Not all real estate practitioners are REALTORS®. The term REALTOR® is a registered trademark that identifies a real estate professional who is a member of the NATIONAL ASSOCIATION of REALTORS® and subscribes to its strict Code of Ethics. Here's why it pays to work with a REALTOR®.

- 1. Navigate a complicated process. Buying or selling a home usually requires disclosure forms, inspection reports, mortgage documents, insurance policies, deeds, and multipage settlement statements. A knowledgeable expert will help you prepare the best deal, and avoid delays or costly mistakes.
- **2. Information and opinions**. REALTORS® can provide local community information on utilities, zoning, schools, and more. They'll also be able to provide objective information about each property. A professional will be able to help you answer these two important questions: Will the property provide the environment I want for a home or investment? Second, will the property have resale value when I am ready to sell?

- **3.** Help finding the best property out there. Sometimes the property you are seeking is available but not actively advertised in the market, and it will take some investigation by your REALTOR® to find all available properties.
- **4. Negotiating skills**. There are many negotiating factors, including but not limited to price, financing, terms, date of possession, and inclusion or exclusion of repairs, furnishings, or equipment. In addition, the purchase agreement should provide a period of time for you to complete appropriate inspections and investigations of the property before you are bound to complete the purchase. Your agent can advise you as to which investigations and inspections are recommended or required.
- 5. Property marketing power. Real estate doesn't sell due to advertising alone. In fact, a large share of real estate sales comes as the result of a practitioner's contacts through previous clients, referrals, friends, and family. When a property is marketed with the help of a REALTOR®, you do not have to allow strangers into your home.

Your REALTOR® will generally prescreen and accompany qualified prospects through your property.

- **6. Someone who speaks the language**. If you don't know a CMA from a PUD, you can understand why it's important to work with a professional who is immersed in the industry and knows the real estate language.
- **7. Experience**. Most people buy and sell only a few homes in a lifetime, usually with quite a few years in between each purchase. Even if you have done it before, laws and regulations change. REALTORS®, on the other hand, handle hundreds of real estate transactions over the course of their career. Having an expert on your side is critical.
- symbolizes family, rest, and security—it's not just four walls and a roof. Because of this, homebuying and selling can be an emotional undertaking. And for most people, a home is the biggest purchase they'll every make. Having a concerned, but objective, third party helps you stay focused on both the emotional and financial issues most important to you

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11:45 Registration | 12 Noon Box Lunch/Presentation

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Mail to NBAR, 401 Old Newport Blvd., Suite 100, Newport Beach, CA 92663

or Fax to 949-631-4276 Attn: Vanessa Moore

YPN Corner

By **Krista McIntosh,** YPN Chairman

Happy 2013!

I hope you all have had a great start to the year! We are very excited to announce the first YPN event of 2013 with guest speaker Jeremy Lehman! Not only a successful real estate broker, Jeremy has mastered the ever changing world of mobile technology! Having been frustrated myself with no knowing which apps to use for listing presentations or open houses Jeremy will guide us on which ones work the

best and which ones are NOT worth the money. His tips and secrets are sure to wow even our most technologically savvy clients. Please join the Newport YPN for a very informative and beneficial lunch at the Board of Realtors, March 13th starting at noon. Please contact the Association office at (949) 722-2300 to sign up, hope to see you there!







I. Introduction

Social networking and media Web sites such as Twitter®, MySpace®, Wordpress®, Blogster®, Active Rain®, YouTube®, Flickr®, Google Wave®, Google Buzz®, Second Life®, Yelp®, LinkedIn®, DIASPORA*®, and Facebook® as well as personal and public Blogs (such as Real Estate Tomato, Mashable) are revolutionizing the business world. Social media is increasingly being used by REALTORS® and can be quite beneficial for increasing business opportunities, but there are a

few legal issues about which REALTORS® should be aware when using social media. These sites present a set of potential legal and ethical liabilities. Existing state and federal laws, as well as the NAR Code of Ethics, affect how a REALTOR® may use a social networking site in a business capacity. Possible legal issues that may arise when participating in social networking are defamation, impersonation of another, fiduciary duty of confidentiality, false light, copyright violations and advertising traps.

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Newport Beach Association of REALTORS® CHARITY GOLF TOURNAMENT

SeaCliff Country Club **Monday, April 29, 2013**



9:30a.m. - Check-in & Registration **10:00 a.m.** - Shotgun Start - Scramble Format 4:00 p.m. - Awards Banquet **Tournament Chairman:** Adam Vaughan, Mariners Escrow PATION OF Awards • Prizes • Raffle • Silent Auction **Awards for:** 1st, 2nd, 3rd Mens & Mixed Foursomes Closest to Pin and Men & Women's Longest Drive

NEWPORT BEACH ASSOCIATION OF REALTORS®

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PAGE **EIGHT**

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SCCC dress code:			

Shorts must be 17" from inseam, shirts must have collars, no denim, jeans, t-shirts, tank tops, spaghetti strap tops or bare midriffs.

Mail to: Kimberly Foreman, NBAR, 401 Old Newport Blvd. Ste 100, Newport Beach, CA 92663 or Fax to: 949-642-4105



The CRMLS Board of Directors approved a policy change to allow Agent reports and Agent displays to be emailed from the CRMLS Matrix platform. When emailing Agent reports or adding Agent displays to an Auto Email, the recipient must be yourself or an active CARETS participant or subscriber. Emailing Agent reports or displays to a client is a direct violation of Section 12.11 and Section 12.12 of the CARETS Standardized Rules and Regulations.

Emailing an Agent Report

Follow the steps below to email an Agent report from the Matrix Search

Results screen:

- Click the checkbox next to each listing you want to email.
- 2. Click the Email button.
- Enter your email address or the email address of an active CARETS participant or subscriber in the To field.
- 4. Click the Additional link under Displays.
- 5. Select a display in the Additional display drop-down menu.

Warning:

By selecting a display in the Additional display drop-down menu, you will be sending Agent proprietary information to all email addresses listed in the To and CC fields. Emailing Agent reports or displays to a client is a direct violation of Section 12.11 and Section 12.12 of the CARETS Standardized Rules and Regulations.

- 6. Enter a subject in the Subject field.
- 7. Enter a message in the Email Body field.
- 8. Click the Send button to send the Agent Report.

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Deborah DesJardins

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Freedom Escrow is proud to announce...

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FREE CRMLS Training

Join the Newport Beach Association of REALTORS® and California Regional MLS on **Wednesday, February 27**th from 9:00 a.m. to 4:00 p.m. for the following training classes:

My Matrix from 9:00 a.m. to 10:00 a.m.

In this course you will learn how to brand and customize your email signature, listing displays, exports, and reports. The CRMLS Matrix platform's flexibility gives you the option to control of what you see on your search pages.

Searching 101 from 10:00 a.m. to 11:00 a.m.

In this course you will learn how to quickly search for listings using the CRMLS Matrix platform. Learn how to search for listings, how to use a map search, how to email and print properties, and more.

Automating Your Clients in Matrix from 11:00 a.m. to Noon

Discover how easy it is to add and manage client information using the CRMLS Matrix platform. Learn how to set up your clients to receive automatic emails of new listings that match their criteria and how to preview those emails to obtain a better understanding of what listings interest them.

CMA for Success from 1:00 p.m. to 2:00 p.m.

In this course you will learn how to create a comparative market analysis presentation using CRMLS Matrix. You will learn how to save and modify your CMA presentation and create a Buyer and Seller's Net sheet that you can give to your clients.

Listing Management from 2:00 p.m. to 4:00 p.m.

This class will teach you how to add and manage your listings, photos, and supplements in the CRMLS Matrix platform.

Location:

Newport Beach Association of REALTORS® 401 Old Newport Boulevard #100 Newport Beach, CA 92663

*Note: Parking is available on the street or the second floor of The Chicken Coop restaurant across the street of the Newport Beach Association of REALTORS®.

Space is Limited. To reserve your seat, go to

http://crmls.org/crmlsClassSignup/Default.aspx?Association=NEWPORT.

Can't come to a class?

Attend a web conference class at the comfort of your office or home. For a full list of available webinars go to http://www.crmls.org/Help/training_schedules/Webinars.pdf.

For questions or support, call (909) 859-2040, (800) 925-1525 or visit http://www.crmls.org/support.



FREE CRMLS Web Conference Training

Join us for any of the free web conference classes listed below in the comfort of your office or home. Spaces are limited. Click on the registration link for the desired class and reserve your spot.

Date	Subject	Start Time	End Time
3/1	Realist Tax	10:00 AM	11:00 AM
3/1	Agent 101	2:00 PM	3:00 PM
3/4	CRMLSMobile.com	2:00 PM	3:00 PM
3/5	<u>AnnounceMyNews</u>	9:00 AM	10:00 AM
3/6	<u>AnnounceMyNews</u>	10:00 AM	11:00 AM
3/6	Smart Desk & Smart Sites Overview	10:00 AM	11:00 AM
3/6	<u>AnnounceMyListing</u>	11:00 AM	12:00 PM
3/6	Automating Your Clients in Matrix	2:00 PM	3:00 PM
3/7	Beyond the Basics: AnnounceMyNews &	10:00 AM	11:00 AM
	<u>AnnounceMyListings</u>	10.00 AW	11.00 AW
3/7	CMA for Success	2:00 PM	3:00 PM
3/8	Appraiser 1004MC	10:00 AM	11:00 AM
3/8	Cloud CMA	2:00 PM	3:00 PM
3/11	<u>CRMLSMobile.com</u>	10:00 AM	11:00 AM
3/11	Searching 101	2:00 PM	3:00 PM
3/12	<u>AnnounceMyListing</u>	10:00 AM	11:00 AM
3/12	Smart IDX & Smart Sites Overview	10:00 AM	11:00 AM
3/12	<u>AnnounceMyNews</u>	11:00 AM	12:00 PM
3/12	Smart Sites Adminstration	2:00 PM	3:00 PM
3/13	Automating Your Clients in Matrix	10:00 AM	11:00 AM
3/13	<u>AnnounceMyNews</u>	10:00 AM	11:00 AM
3/13	CMA For Success	2:00 PM	3:00 PM
3/15	Realist Tax: Your Farming Resource	10:00 AM	11:00 AM

Want to see additional scheduled web conferences? Click here.

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II. Potential Legal Liabilities When Using Social Media

A. Defamation

0.1. What is Defamation?

A Defamation is a negative statement that damages a person's reputation. This includes damage to one's professional reputation (Cal. Civ. Code §§ 45, 46). Defamation can take one of two forms (Cal. Civ. Code § 44). Libel is visual defamation, such as a graphic or printed words (Cal. Civ. Code § 45). Slander is verbal defamation (Cal. Civ. Code § 46).

Q 2. What makes a negative statement a defamatory statement?

A The courts have defined four characteristics that distinguish an ordinary negative statement from a defamatory statement.

- Publication: "Publication" here is a technical term that is much broader than the word is commonly used. It means any intentional communication to someone who understands how the statement damages the plaintiff's reputation. A publication "need not be to the public at large; communication to a single individual is sufficient." (Smith v. Maldonado, 72 Cal. App. 4th 637, 645 (1999)). What matters is that the information is intentionally spread to a third party.
- · False: A publication is false in a defamatory sense if it has the following

characteristics:

- (1) The publication sounds like fact rather than opinion. This is not about prefacing a statement with "I think" or "in my opinion" because opinions can imply certain facts. For example, "I think John sells without a license" would be interpreted as a statement of truth because specific facts must be assumed for someone to think that John practices without a license. On the other hand, "John is a loser" is an opinion that can be based on any number of assumptions. The latter statement is not defamatory because it "cannot be reasonably interpreted as stating actual facts about an individual." (Milkovich v. Lorain Journal Co., 497 U.S. 1, 18, 20
- (2) The publication is specific enough to be proven false (Seelig v. Infinity Broadcasting Corp., 97 Cal. App. 4th 798, 809 (2002)). "I think John sells without a license" is a provably false statement because John can prove that he does, indeed, have a license. On the other hand, "John is a loser" is too vague a statement to be proven.
- Unprivileged: A privileged publication is a technical term defined in California Civil Code § 47. Some examples include allegations in divorce proceedings and references for employment applications (Cal. Civ. Code § 47). Privileged publications are specially protected in court against claims of defamation.
- •Defamatory: This means that the statement exposes a person to hatred, contempt, ridicule, disgrace, social disdain or that which "has a tendency to injure him in his occupation" (Cal. Civ. Code § 45). There are two ways that

this can happen. Per se defamation is obvious in the damage it can cause (e.g. accusing someone of committing a serious crime) (Cal. Civ. Code §§ 45a, 46 (5)). If the damage is not per se, then a plaintiff must prove how he or she has been damaged (Cal. Civ. Code §§ 48a (b), 45a).

Q 3. What are the penalties for defamation?

A Defamation is considered a civil injury and can entitle the plaintiff to damages. Additionally, Article 15 of the NAR Code of Ethics states that "REALTORS" shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices." This means that REALTORS® must be honest in their statements about each other. Therefore, defamation can trigger professional sanctions. For example, in Case Interpretation 15-2, NAR found a violation when one REALTOR® told a potential customer that another REALTOR® was uncooperative.

0.4. How does the tort of defamation come into play when using social networking Web sites?

A The consequences of defamatory statements that are made online will vary according to the source and content of the statements.

Federal law provides protection to hosts of internet content. This law is called the "Good Samaritan" Provision of the Communications Decency Act (47 U.S.C. § 230 (c)). It protects certain people and entities from civil suits for offensive content that they display, but do not create, over the internet. For example, if a person writes an offensive comment on a blogger's Web site, the blogger cannot be sued if she does not remove it. Protection is extended to a reposting of someone else's defamatory material. In one California case, a host was protected from suit when he reposted a defamatory letter written by someone else (Barret v. Rosenthal, 40 Cal. 4th 33, 63 (2006)).

However, Standard of Practice 15-2 of the NAR Code of Ethics encourages REALTORS® to refrain from recklessly republishing false or misleading material. For this reason, although the Good Samaritan Provision will protect from civil liability, a REALTOR® may still be professionally sanctioned for reposting another's defamatory material. Furthermore, if defamatory content is created by the user (and most of the content on a person's social media page is created by the user), then the Good Samaritan Provision is unlikely to provide protection.

There is also a law that provides some protection if the comments are considered First Amendment speech. The Anti-SLAPP law (Strategic Lawsuit Against Public Participation) makes it more difficult for a plaintiff to bring a civil suit against a defendant if the offensive statements were about an issue of public interest and were made in a public forum (Cal. Code Civ. Proc. § 425.16 (b)(1), (e)). Public interest has been defined broadly. In one California case, the plot of a popular television show was considered to be an issue of public interest. The court said that an "issue need not be 'significant' to be protected." (Tamkin v. CBS Broadcasting,

Inc., 193 Cal. App. 4th 133, 143 (2011)). In California, public Web sites are considered public forums under the Anti-SLAPP law (Vogel v. Felice, 127 Cal. App. 4th 1006, 1015 (2005)); however, it is unclear whether the semi-privacy of social networking sites would count as a public forum.

To date, there has been no guidance from the California courts about defamation through social media. Therefore, the best advice is to be careful when criticizing a fellow REALTOR® or a client. Make sure that comments do not have the four characteristics that make a negative statement defamatory. Alternatively, make sure that a negative statement is true. Truth is "a complete defense against civil liability" (Smith v. Maldonado, 72 Cal. App. 4th 637, 646 (1999)). The negative statements do not need to be one hundred percent accurate, so long as they are "substantially true so as to justify the 'gist or sting' of the remark" (Campanelli v. Regents of University of California, 44 Cal. App. 4th 572, 582 (1996)). If a false or misleading statement has been published or republished on a REALTOR'S® social media page, that member can take one of two steps to remedy the problem: clarify the statement or remove the statement entirely.

B. Impersonating Another on the Internet

Q 5. What is online impersonation?

A Online impersonation means to use the internet to present oneself as another person. This includes everything from posting an article under someone else's name to hacking into

another's e-mail and sending messages to people on that person's contact list.

Q 6. What kind of online impersonation is prohibited?

A In 2011, California enacted a law that prohibits a "credible" impersonation of an "actual person" that is done with cruel intent (Cal. Penal Code § 528.5 (a)). An online impersonation is credible if the average person could think that the person being impersonated actually wrote the content (Cal. Penal Code § 528.5 (b)). For example, a Twitter® account named "Fake Oprah Winfrey" would not be a credible online impersonation. The average person would understand that the account owner is not actually Oprah Winfrey. A Twitter® account named "Santa Clause" would not come under this statute either because he is not an "actual person." An online impersonation that is done with cruel intent means that the impersonator seeks to harm, intimidate, threaten, or defraud someone else (Cal. Penal Code § 528.5 (a)). The victim need not be the one being impersonated. Cyber bullying would be an example of seeking to threaten a victim who is not the person being impersonated.

Q 7. What is the penalty for credible online impersonation?

A The penalty for online impersonation can be criminal as well as civil. Not only can an impersonator be fined up to \$1,000, but he or she may also be imprisoned for up to one year (Cal. Penal Code § 528.5 (d)).

0 8. How does this affect social net-

continued on page 18



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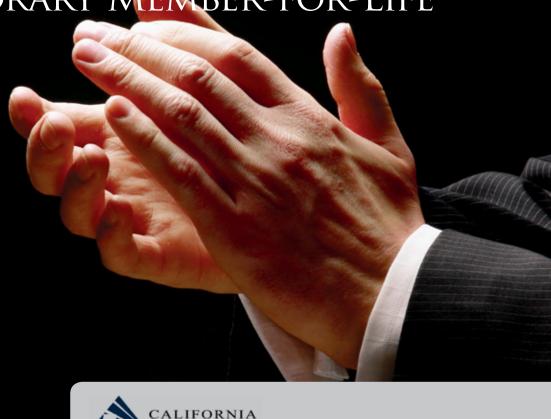
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C.A.R. HONORARY MEMBER-FOR-LIFE

The Honorary Member-for-Life designation is given to REALTOR® Members of the State Association who have served the Association for twenty-five years or more and have attained the age of seventy-five. If you feel you are eligible for this designation, please contact Marcella Scott in our Membership Department at (949) 722-2300 no later than April Applicants' names will 1st, 2013. be submitted for approval to C.A.R.'s Membership Committee, Executive Committee, and Board of Directors at the next business meeting. Those members who are approved will have their State Association dues waived, for life, beginning January the following year. All applicants must be processed by the Fall Meeting to have dues waived the following year, no exceptions. Honorary Memberfor-Life status does not affect NAR dues or local dues



ASSOCIATION

OF REALTORS

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working?

A The law includes examples of the kind of online impersonations that it intends to prohibit; one of them includes opening an account on a social networking site in another person's name (Cal. Penal Code § 528.5 (c)). This means that opening a profile in a competitor's name in order to make the competitor look bad would be illegal. It is currently unclear whether or not parodies or satire would be protected from this statute; however, it is considered unlikely that the law will affect such activity.

C. Fiduciary Duty of **Confidentiality**

Q 9. What is the Duty of Confidentiality?

A The duty of confidentiality comes from two separate sources. The first is California law. It requires all agents to act with loyalty towards their principles. Encompassed within the duty of loyalty is the duty of confidentiality. This means that an agent cannot disclose confidential information for the benefit of a third party or for the agent's own purposes. (Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC, 162 Cal. App. 4th 858, 888 (2008); Huong Que, Inc. v. Luu, 150 Cal. App. 4th 400, 416-17 (2007)). The second source of the duty of confidentiality is the NAR Code of Ethics. Article 1 requires all REALTORS® to "protect and promote" the interests of their clients. Part of this fiduciary duty is the duty of confidentiality. This means that a REALTOR® must respect a client's privacy and not disclose confidential information unless the client consents to the disclosures or the disclosure is required by law or the NAR Code of Ethics (Standard of Practice

Q 10. Is there any other information that must remain confidential?

A Yes. Article 14 of the NAR Code of Ethics forbids REALTORS® from obstructing or disrupting any Professional Standards proceedings. Such proceedings include hearings for both ethics violations and arbitration disputes. The information connected with these hearings—allegations, findings, or the final decision—are considered confidential information. (Standard of Practice 14-2.)

Q 11. What are the penalties for violating the Duty of Confidentiality?

A Violations of either Article 1 or Article 14 of the NAR Code of Ethics could subject a REALTOR® to professional sanctions. In addition, a client can file a civil suit against the real estate licensee for breach of fiduciary duty. Additionally, violating the duty of confidentiality can expose an agent to civil liability for breaching the duty of loyalty.

Q 12. How does the duty of confidentiality affect the use of social networking Web sites?

A Do not share any information that a client would not want shared or information that could harm client interests. As embodied in Standard of Practice 1-9 of the NAR Code of Ethics, receiving consent is the best policy when discussing a client online. Additionally, if a REALTOR® wants to share or sell consumer information gathered through social media, he or she must disclose as such in a reasonable and readily apparent manner (Standard of Practice 12-11).

The requirements of Article 14 of the NAR Code of Ethics mean that any information from a Professional Standards hearing must remain confidential. This means no complaining or boasting about an outcome of a Professional Standards hearing on a site like Facebook®.

D. False Light

Q 13. What is "false light?"

A Privacy is a constitutional right under California's Constitution (Cal. Const. Art. I, § 1). The right to privacy is "the right to live one's life in seclusion, without being subjected to unwarranted and undesired publicity" (Gill v. Curtis Publ'g. Co., 38 Cal. 2d 273, 276 (1952)). False light is one way to invade a person's privacy.

A person is placed in a "false light" when they are publicly presented as having characteristics, conduct, or beliefs that are untrue. The most common form of false light is to use a plaintiff's picture to illustrate an article that has nothing to do with the plaintiff (O'Hilderbrant v. Columbia Broadcasting System, Inc., 40 Cal. App. 3d 323, 331 (1974)). In one case, a magazine used a picture of a little league baseball team in order to illustrate stories about coaches who sexually molest youths. While the team's former manager had pleaded guilty to child molestation, the rest of the team was able to sue for false light because the use of the photo insinuated that everyone on the team was either a molester or had been molested. (M.G. v. Time Warner, Inc., 89 Cal. App. 4th 623 (2001)). Although false light is similar to defamation, it covers a broader range of situations.

Q 14. How does someone put another in false light and what are the penalties?

A Placing someone in a false light can have legal ramifications if

- •The one who created the false light knew that the statement was false or did not care whether the statement was true or not (Time, Inc. v. Hill, 385 U.S. 374, 390 (1967)).
- •The false light in which someone is placed would be highly offensive to the average person. Although not an explicit requirement, courts typically consider this when assessing a false light claim (Gill v. Curtis Publ'g. Co., 38 Cal. 2d 273, 280 (1952)).

As with defamation, false light can entitle the injured party to damages and invoke professional sanctions.

Q 15. How does false light affect the use of social networking Web sites?

A Because false light and defamation are such similar issues, the same potential liabilities that appear for defamation will appear for false light. For this reason, the same warnings follow: be cautious when writing about or featuring a fellow REALTOR® or a client on a

site in a negative way. Follow the recommendation of Standard of Practice 1-9 of the NAR Code of Ethics and receive consent from clients before featuring them on a social networking site.

E. Copyright Violations

Q 16. What is a copyright?

A A copyright gives a person exclusive ownership rights over things that she or he creates. Think of the creation as a piece of property, such as a house. A person can choose to remodel the house, or choose to rent the house out to someone else or choose to sell the house. No matter what the homeowner chooses to do, it is the homeowner's exclusive right to do so. The same applies to copyright protected creations. Copyright protection extends to anything that is considered original and displays a minimal level of creativity (17. U.S.C. § 102 (b); Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 345 (1991)).

Q 17. What is copyright infringement?

A Copyright infringement is the unauthorized use of a copyrighted work (17 U.S.C. § 106). Examples include: copying or distributing copies of a copyrighted work without authorization from the copyright owner or incorporating portions of a copyrighted work into another creation.

Q 18. What kinds of penalties and damages exist for copyright infringement?

A Severe criminal and civil penalties exist for copyright infringement. In addition to criminal sanctions, such as imprisonment from 1 to 10 years, the infringer may be liable to the copyright owner for damages and attorney's fees as well (17 U.S.C. §§ 504, 505).

Q 19. How does copyright law affect social networking?

A The real estate industry utilizes many copyrighted materials. Some examples include C.A.R. standard forms, REALTORS®' MLS listings, virtual tours, and photographs. Posting copyrighted material, in whole or in part, on a social networking site without the permission of the copyright owner can create liability for copyright infringement. However, merely linking to another Web site may not necessarily be copyright infringement.

For more information about copyright law, please see C.A.R.'s Legal Q & A, "Copyright & Trademark Law" which will be published in the near future.

F. Advertising Traps

Q 20. Must a REALTOR® disclose the name of her or his firm when advertising through social media?

A Yes. The NAR Code of Ethics requires a REALTOR® to disclose the name of her or his firm in a reasonable and readily apparent manner when advertising real estate services or listed property in any medium. However, the Code acknowledges that disclosing the name of the firm may not be practical in electronic displays of limited information, such

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as Twitter® "tweets." Such displays are exempt from the disclosure requirement, but only when linked to a display that includes all required disclosures. (Standard of Practice 12-5).

O 21. Do REALTORS® have to ensure that information posted through social media is current and accurate?

A Yes. REALTORS® have an ethical obligation to present a true picture in representations to the public; this includes any representations made using social media. REALTORS® must use reasonable efforts to ensure that posted information is current. When it becomes apparent that information is no longer current or accurate, prompt corrective action must be taken by updating or removing the information. (Standard of Practice 12-8).

Additionally, REALTORS® are prohibited from deceptively using metatags, keywords, or other methods to direct, drive, or divert Internet traffic, or to otherwise mislead consumers (Standard of Practice 12-10).

Q 22. May a REALTOR® post another member's listing on a social networking site?

A It depends. Unless a REALTOR® receives prior consent from the listing member, it is unethical to advertise another REALTOR'S® listings (Please see Article 12 and Standard of Practice 12-4 of theNAR Code of Ethics). This is true even if the advertising is done on the Internet (Please see Case Interpretation 12-16). See also Question 27.

Q 23. May a REALTOR® "link" to another member's social media page or a Web site where other REALTORS'® listings are located?

A In general, yes. Providing a simple text link to another REALTOR'S® social media Web site or a Web site where other REALTORS®' listings may be advertised is ethical according to NAR (See Case Interpretation 12-15). However, more sophisticated linking that is misleading or that implies an endorsement or affiliation with the linked Web site that does not actually exist may raise ethical issues.

0 24. Are members allowed to use the term REALTOR® and other REALTOR® family trademarks on social networking sites?

A Yes, REALTORS® are permitted to use the term REALTOR® and other REALTOR® trademarks. However, NAR has set guidelines for the use of trademarked material on the internet, including through social media:

- The term REALTOR® must be used to refer to a member or a member's firm.
- The term REALTOR® may not be used with descriptive words or phrases. For example, a Twitter® account named Number1realtor or Chicagorealtors would be inappropriate.
- 3. The term REALTOR® cannot be used to denote an occupation or a business. Words such as "your," "my," or "our" cannot be used with trademarked terms. For example, a Facebook®

username such as "My Realtor" or "YourChicagoRealtorJohnDoe" are inappropriate uses of the term REALTOR®.

- For use as an account name, the term REALTOR® does not need to be separated from the member's name or firm name with space or punctuation. Twitter® accounts named JohnDoe-Realtor or johndoerealtor are both proper uses of the term REALTOR®.
- The REALTOR® block R logo may not be used as a link on a social media page. Such uses can suggest an endorsement or recommendation of the linked site by your Association. However, the block logo may be used to establish a link to the National Association's Web site at realtor.org.

For additional information on trademark issues, see the following resources:

- C.A.R. Legal Q & A, The Internet and the Real Estate Industry
- NAR's articles (available at realtor.org)
 - o Using NAR Trademarks in Usernames
 - o Social Media Trademark FAQ
 - o Trademark/Logo Use on the Internet
 - o Learn how to manage your reputation in the age of social media
- · For specific questions regarding the use of the REALTOR® trademark, please contact NAR's Trademark Protection Program (a branch of the Legal Affairs Department) at 1 (800) 874-6500, Ext. 8270 or (312) 329-8373.

Q 25. Are there any rules regarding

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THE TERMITE GUY





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endorsements on an individual's social media page about a member or member firm?

A It depends. If there is a connection between an endorser and member/member firm that could affect the credibility of an endorsement, then the Federal Trade Commission requires that the connection be disclosed (16 C.F.R. § 255.5). For example, if a member firm provides a free service to a popular blogger so that the firm can be featured on the blog, then the blogger must mention that the service was provided free of charge. For another example, employees that promote a member firm's services on their own social networking pages must disclose their relationship to the firm in their promotions.

For more information regarding the Federal Trade Commission's rules on endorsements, C.A.R. recommends the following publications from the Federal Trade Commission:

- The Revised Endorsement Guide Concerning Endorsements and Testimonials in Advertising (available at: http://ftc.gov/os/2009/10/091005 revisedendorsementguides.pdf).
- The FTC's Revised Endorsement Guides: What People are Asking (available at:http://business.ftc.gov/documents/bus71-ftcs-revised-endorsement-guideswhat-people-are-asking).

III. Potential MLS Violations When Using Social Media

Q 26. May MLS Participants display their own MLS listings on their own social networking pages?

A Yes (C.A.R. Model MLS Rule 12.8).

Q 27. May MLS Participants display another MLS Participant's MLS listings on their social networking pages?

A Not unless prior consent is obtained from the member who first created the listing. Generally, permission is required in order to advertise another's MLS listing through social media or otherwise. (C.A.R. Model MLS Rule 12.8). However, if the electronic display falls within the scope of Internet Data Exchange ("IDX"), permission has been granted through the MLS Rules.

Q 28. What is the Internet Data Exchange ("IDX") and what type of consent does it build into the rules?

A Internet Data Exchange ("IDX") is a NAR-mandated Internet policy allowing MLS Participants to electronically display MLS listings of others on websites and using mobile applications that a Participant of the MLS" controls." With IDX, the consent of MLS Participants to display each other's listings in this fashion has been built into the MLS rules. Consent for such display is presumed unless a listing broker affirmatively notifies the MLS that she or he refuses to give consent (either on a blanket or on a listing-by-listing basis). (C.A.R. Model MLS Rule 12.16).

Q 29. Can a MLS Participant or Subscriber use the permission established in IDX to display the listings of other MLS Participants through social media?

A Only if the website or mobile application meets the "control" test may the display be permitted under IDX.

Q 30. What does "control" mean under the IDX policy?

A Under IDX, "control" means participants must have the ability to add, delete, modify and update information as required by this policy. All displays of IDX listings must also be under the "actual and apparent control" of the participant, and must be presented to the public as being the participant's display.

"Actual control" requires that the participant has developed the display, or caused the display to be developed for the participant pursuant to an agreement giving the participant authority to determine what listings will be displayed, and how those listings will be displayed.

"Apparent control" requires that a reasonable consumer viewing the participant's display will understand the display is the participant's, and that the display is controlled by the participant.

Q 31. What types of electronic display meet the "control" test?

A IDX policy is not intended to cast open the gate to "social media," but some data displays on 3rd party

"social media" sites – subject to the overall requirements of IDX, of course - may fall within the policy, as would Participants' and Subscribers' websites and Participant displays on franchisors' websites. If electronic display can meet the actual and apparent "control" test, it qualifies for display under IDX.

Q 32. Assuming I've met the IDX "control" test, what are the other IDX rules with which my use will have to comply?

A Electronic displays of IDX data must be in accordance with all the IDX rules: see Internet Data Exchange Q&A.

Q 33. What happens if my use cannot satisfy the IDX "control" test?

A It would not be permitted under IDX and would require a separate permission from the listing agent outside the MLS (i.e. the built-in consent of IDX disappears).

Q 34. Is there any other way I would be permitted to electronically display data not meeting the "control" test through the MLS?

A Separate and apart from the IDX display policy, an MLS – in its discretion – could develop a "Non IDX/VOW Electronic Display" policy which could permit data uses outside IDX display. Should an MLS choose to design such a policy, it would have its own display rules outside of IDX and operate by separate consents from IDX along the line of listing syndication in that it

would be up to brokers to opt in. [Note: The C.A.R. Model MLS Rules have NOT addressed nor recommended such a move at this time.

Q 35. Are there any other restrictions on how a MLS listing must be displayed on social media?

A Yes. According to the C.A.R. Model MLS Rules, all advertising and representations made must be accurate, must not be misleading and should create an overall true picture (C.A.R. Model MLS Rules 8.3, 12.10).

IV. Conclusion

Q 36. Can you provide some practice tips?

A Here are some practice tips:

- •Review your blogs and social media sites to be sure the information is accurate and up-to-date.
- •Regularly monitor and delete any inaccurate, derogatory, vulgar, offensive or obscene posting by others, if you permit others to post on your Web site or blog.
- •Don't gossip and don't pass along unverified information.
- Remember that anything you posttext or photos--on the Web can take on a life of its' own, even after you remove it.
- Obtain permission before posting any intellectual property or copyrighted materials of others, including music and videos.
- Don't violate your client's confiden-

- tiality. That duty remains even after escrow closes or the transaction has ended and you are no longer the agent for your client.
- Even seemingly innocuous statements can have unintended effects: Posting the information that your sellers are going on a two-week vacation. Then your listed property is burglarized.

What is Happening in Sacramento

I write this on February 21, one day before the deadline for all legislators to introduce bills for the year.

Among the legislation that I have authored this year is AB 40, a proposal to reform rehabilitation clinics/homes across the state. Rehab homes are popular in many coastal Orange County cities and unscrupulous providers create many dangers for their patients and the community. Last year, a local provider continued to operate under loopholes in the law even though their license had been suspended after one of their patients died. In addition, I have introduced AB 134, the Family Protection Act, which will protect the privacy of gun owners in California. My other bills this year will include proposals to increase transparency at the University of California Board of Regents and pension reform within the UC system.

I'm looking forward to discussing these proposals in more detail in the coming months. Now is the time for you to start monitoring the numerous proposals that will be introduced by the other 119 members of the State Legislature. In the last decade, we've seen countless bad ideas that have increased expenses, driven businesses out of the state, and restricted individual liberties.

In the coming weeks, my staff and I will be reviewing the flood of last-minute bill introductions to see what we are up against for the coming year. If you see any bill proposals you would like to discuss, please don't hesitate to contact my office at (714) 668-2100.

Assemblyman Allan R. Mansoor represents California's 74th State Assembly District. The 74th Assembly District includes the cities of Costa Mesa, Newport Beach, Laguna Beach, and Laguna Woods, along with large parts of Irvine and Huntington Beach.



MARCH | TWO THOUSAN

VENTY-FOUR

NEWPORT BEACH ASSOCIATION OF REALTORS®

DESIGNATED REALTOR MEMBERSHIP

Ke-Chia Chen

Ke-Chia Chen

Tom Daniels

Thomas Daniels

Michael Hall

Colony Pacific Development

Joshua Huntsman

(added Board to MLS only Membership)
The Huntsman Group

Nick Louis

(added Board to MLS only Membership)

NAL Financial

Grant Wiese

Knowleton Realty

REALTOR® MEMBERSHIP

Blasingame, Jeff

HOM Sotherby's

Borozna, Angela

CB Previews Intern.

Chin, Cindy

CB/Previews Intern.

Collins, Whitne

CB/Previews Intern.

DeFrenza, Victoria

Sotherby's Intern.

Hourigan, Patrick

Mark Whitehead Broker

Hubbard, Annie

CB/Previews Intern.

Katona, Laurie

CB/Previews Intern

Long, Sharon

Trojan Financial Solutions

Miller, Priscilla

Weichman Associates

Moreno, Cyndi

CalWest Prop.

Muradova, Nadia

Alexandria

Owens, Danielle *CB/Previews Intern.*

Pan, Kai

CB/Previews Intern.

Portillo, Jorge

Prudential California

Thompson, Tori

Surterre Properties

Wiese, Jill

Knowleton Realty

MULTIPLE LISTING MEMBERSHIP

Kyle Albers

Kyle Albers

John Gorske

CTM Management Inc.

Beth Hallett

Elizabeth Hallett

Greg Hansen

Greg Hansen

Yvette Marquez

Yvette Marquez

Trevor Peters

Trevor Peters

Landsman, Karen

Select Real Estate

Taylor, Lynn

Maxus Realty

Whitmer, Kelsey

McWhit Properties

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CIS

Christopher Jones

Chicago Title

Sandra Koop

Pacific Coast Loan servicing

Denise Mower

Wells Fargo Home Mortgage

Maria Nagano

Transamerican Escrow

MEMBER TRANSFERS

Jarrod Fry

from Hom Real Estate to Abrams Coastal Realty

Heather Hosto

from Teles Prop. to Keller Williams

Tammi Smith

from Lynch Assoc. to Newport Harbor Prop

Tim Robertson

from First Team Estates to Surterre Prop

Chris Skawinski

from Harcourts Prime to First Team Estates

James Skawinski

from Harcourts Prime to First Team Estates

Lisa Starnes

from Waterpointe to Abrams Coastal

Travis White

from Prudential Calif. Realty to First Team Realty

Clerical User

Chris Avis

Jeffrey M. Wright

Helen Colefield

CB/Previews Intern.

Stewart Mcpherson

J. C. Manning Co.



CALENDAR OF EVENTS



Wed, Mar 6 9:00 AM — CRMLS Training

Wed, Mar 6 9:00 AM — Affiliate Committee Meeting

Wed, Mar 13 8:30 AM — New Member Orientation

Wed, Mar 13 12:00 PM — YPN Apple Apps Luncheon

Thu, Mar 14 9:30 AM – YPN Meeting

Wed, Mar 20 9:00 AM — HUD Workshop



