

**SOCIAL MEDIA AND PROPERTY OWNERS
ASSOCIATIONS—TWEET OTHERS AS YOU WOULD
LIKE TO BE TWEETED**

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SOCIAL MEDIA AND PROPERTY OWNERS ASSOCIATIONS—TWEET OTHERS AS YOU WOULD LIKE TO BE TWEETED

I. DISCLAIMER

We advise the readers that the content of this paper and the accompanying presentation are based on some of the more negative experiences through which we counseled boards of directors of associations, volunteers that in most cases are simply trying to better their community. Community associations are non-profit corporations and the directors generally discussed in this paper and the presentation reside within the community or own property in the community and are unpaid volunteers. In our recent experience, the use of social media to vent or voice an opinion about a board decision or in some cases about an individual director, and his/her character is on the rise. While we recognize the right to opinion and appreciate that no one is perfect, for the vast majority of “social media matters” that our firm handles, what seems to be missing is a sense of courtesy, manners, and/or respect. The consequence is a preventable diversion of association resources, in most cases in the form of time and finances of the association, whether or not litigation is filed.

II. INTRODUCTION

In a short amount of time, the use of social media by community associations or their members spiked. Most practitioners formerly or perhaps still currently advise against association use of social media applications as a form of official association communication. Given the proliferation of social media in recent years, notably associated with the embracement of the concept by a different, wiser demographic, association practitioners should expect that it is only a matter of time before the use of social media will be addressed in the associations they represent. Sometimes the idea originates from a board member, other times it’s the owners that bring the idea to the board of directors. Notwithstanding the origination of the inquiry of social media use by an association, we confidently believe that social media will one day be the expected form of association communication. Newsletters, mail outs, websites, and to an extent emails, are becoming the old way of doing things even if the law requires their use to disseminate information or formal notice of meetings, elections, and/or votes. With updates on friends, family, and news arriving in a few social media applications, owners and boards of directors additionally want community information pushed to the same social media applications.

III. ASSOCIATION-SPONSORED SOCIAL MEDIA APPLICATIONS

A. Implementation Strategy

The adage “haste makes waste” rings true in the social media context given that the lack of consideration of an implementation strategy and/or controls will inevitably lead to a page where users may run amok with postings, many of which may be unrelated to the community. Even worse, our experience with social media applications set up with no plan and no controls results in an application more focused on personal opinion rather than the fostering of improved community experience. Social media is the new place to vent, offer opinion, speculation, news, information, “facts”, and even address character; usually done so without investigation, factual support, or research. Nonetheless, readers of information on social media often consider the information true with little or no time spent verifying the information, investigating the credibility of the author, or even taking the time to formulate an independent opinion. The notion that “I read it on [insert: social media application], so it must be true” is beginning to take hold in the context of community associations.

It is prudent for a board to discuss the “why” of the social media application and/or its purpose.¹ A board of directors must ask the following questions: Are we pushing out information only? Or will we also receive information from our residents? Are we fostering communication with our members, between our members, or both?

It’s easy to say that social media will improve the community experience. It is harder to define the purpose of the application as it may be community-specific. It is best to equate the purpose of the social media application to a mission statement; something that states the purpose or goal of the [social media application].² With this mission, it becomes easier to control the content later when we know why we created the association’s social media application in the first place. As should be expected, to the extent content is controlled by the association, users will cry “Free speech!” With a clear mission defined certainly tied to the betterment of the community experience, we can

¹ Social Media in Communities: Is Facebook Your Friend or Foe? Is using Twitter Good or Bad for the Community? How Associations Can Benefit from and Properly Handle Social Media Issues. *Daniela Burg, JD, Community Association Underwriters of America Inc., Newtown, PA; Edward Hoffman, Jr., Esq., Barrow | Hoffman, Warminster, PA; Gerald C. Wigger, Esq., Ortale, Kelley, Herbert and Crawford, Nashville, TN*

² See <https://www.merriam-webster.com/dictionary/mission%20statement>

cancel unproductive or non-community related content by virtue of the failure to achieve the purpose, goals, aims and/or values of the association's social media application.

By way of example as it relates to the mission of the association's social media application, please see the following examples:

The purpose of this social media application is to improve the community experience for our members through the productive exchange of information between the association and its members.

Any website, form of social media, newsletter or other publication created on behalf of the Association shall be for informational and association-related communication purposes only.

To protect and enhance property values through the exchange of information between the association and its members in a productive manner with the goal of improving the community experience of our owners.

With a mission clearly defined, when considering questionable content, we may pose the question, "does this content achieve the mission of the association's social media application?" The mission of the association's social media application is the first component in the corporate document detailing the association's policy on its social media application.

B. Social Media Policy

1. Overview and Verification of User

If an association is going to engage in the use of a social media application, the board of directors should adopt a social media policy. Associations need a formal corporate document that more specifically identifies permitted and prohibited content and the mechanisms by which that content may be controlled or removed. The first component of the social media policy is the mission of the social media application. From there, the social media policy will function like terms of use of a website or other social media application. Identify or define the authorized users of the association's application. Limit access to owners and tenants. Unverified access may allow the opportunity for individuals outside the community to devalue the community's social media experience, not to mention provide opportunity for "internet trolls". The verification process should be simple; a request in writing submitted to the administrator of the association's social media application requesting permission to join the application. From there the

administrator verifies that the requestor is an owner, tenant, or occupant of property in the community. Access to the social media application granted. A verification process is imperative to success of the social media application.

2. Permitted and Prohibited Content

Once the user is verified, define the appropriate content that furthers the mission of the social media application. By way of example, a definition of "permitted content" may be the following:

"Permitted Content" means content that is respectful, positive, in good taste, and productive toward the community experience.

Iterate as much as may achieve the purpose, goals, aims and/or values of the association's social media application.

Some associations may choose to be more specific in the definition of "permitted content"; we submit the following examples:

"Permitted Content" means content that includes information about the community including lost pets, owners' items for sale (no garage sales), recommended vendors (babysitters, contractors, landscapers, etc.), social events within the community sponsored by the association, and recent events affecting the community (examples: highway expansions adjacent to the community, major weather events, adjacent development).

With a definition of the content that is permitted, we then address prohibited content; an example follows:

A user **shall not** publish any content that:

- a. the member does not have the right to publish;
- b. is for the purpose of advertising a commercial business or proposition (not including business referrals or residential classifieds);
- c. is in connection with pyramid schemes, chain letters, junk email, spamming, or any duplicative or unsolicited messages (commercial or otherwise);
- d. is inappropriate, profane, obscene, indecent, discriminatory, hateful, or abusive;
- e. is defamatory, illegal, infringing, or otherwise tortuous;

- f. attempts to identify or identifies potential infractions of the law and/or governing documents of the Association;
- g. may be perceived as violating another person’s right to privacy, including but not limited to owner addresses, pictures of owner or their property, and/or license plate numbers; or
- h. attempts to address or addresses association business.

When a person is at a keyboard, we may experience a difference in behavior in the social media context when compared to that same individual holding the door open for the next person walking into a restaurant. In the context of social media, one may conclude that the “distance” from the other person makes it easier for the publisher to engage in less polite behavior. For this reason, the social media policy should address the legal rights of other users. Prohibit abuse, harassment, stalking, threats, violations of privacy, and defamatory comments on character.

3. Administration and Moderation of the Social Media Application

The question is not one of “if” as much as “when” a user will violate the permitted/prohibited content portion of the social media policy. Moderation by the association allows the right, without the obligation, to control provocative content that violates the social media policy. Deletion in the sole discretion of the association coupled with the right to revoke user rights allows an association to remove unwanted, unproductive content that may circumvent or devalue the mission of the social media application.

Administration of an association’s social media application may be a part-to-full time role depending on the size of the community and whether the application merely pushes information out to the owners, receives information from the owners, or allows owners to comment on each other’s posting. Notwithstanding the presentation of the appropriate mission of the social media application and the recording of a social media policy, associations must consider who will serve the coveted role of the administrator of the social media application.

In our experience, the most common “volunteer” for the administrator is the community member that brought the idea to the board of directors. This individual should be appointed to a “Social Media Committee” with a member of the board of directors serving as the chair of the committee. If other owners in the community express an interest in social media, it may be prudent to allow those individuals to serve on the Social Media Committee as well. We recommend limiting participation to 3-7 members depending on the size of the community.

Lately, we have noticed a shift of this to the member of the board of directors that believes the social media application will improve communication for the association. A Social Media Committee may still be appropriate depending on the level of owner interest in social media.

If the association is professionally managed, the community may have an individual from the management entity administrating the association’s social media application; however, associations should expect to pay for these services, if the management company provides them (not all management companies provide social media administration services).

Whether the administrator is an owner, board member, or management representative, the administrator must be prepared for the “Friday night post” on the association’s social media application. Meaning, in our experience, users tend to publish some of the worst content on association-sponsored applications after business hours or over the weekend. Thus, a discussion amongst the board of directors and the administrator is prudent to define the expectations of the administrator of the association’s social media application. Appropriate questions include:

1. Will the application be administrated on weekdays only?
2. Will the application be monitored after hours? If so, when is the cut-off time (administrators do need sleep)?
3. Will the application be monitored over the weekend or holidays?
4. Do we have a substitute administrator?

No matter which scheduling path chosen by the board of directors, be prepared and have a plan of action for negative content that may be received during off hours/days.

4. Policy Adoption Pursuant to the Texas Property Code

A social media policy satisfies the definition of dedicatory instruments under Section 202.001 of the Texas Property Code:

Dedicatory Instrument means each document governing the establishment, maintenance, or operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to:

- (A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association;
- (B) properly adopted rules and regulations of the property owners' association; or
- (C) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.³

Whether a condominium association, a single-family community association, master-planned community association, townhome association, or even commercial association, Chapter 202 of the Texas Property Code is applicable, and the social media policy contemplated by this paper must be recorded in the real property records of each county in which the community is located.⁴ Section 202.006(b) of the

Texas Property Code provides the following:

A dedicatory instrument has no effect until the instrument is filed in accordance with this section.⁵

Thus, absent recordation in accordance with Section 202.006 of the Texas Property Code, the provisions within an association's social media policy about vetting users, administering content, and/or moderating contents are unenforceable.

5. Liability Concerns

To the extent an association utilizes a social media application that allows posting by owners and adopts a social media policy that provides for moderation and eventual removal of content that violates that policy, the association may have assumed a duty that it will regulate the content. Using defamation as the example, if one owner posts content that defames another and the association does not remove the content despite the authority to do so, has the association now created potential liability for itself? This question certainly must be considered given that the social media application is controlled, administered, and potentially moderated by the association in accordance with the recorded social media policy. While the provisions of the social media policy should give the association the right to moderate content as opposed to the obligation, it may not bode well for any association that does not exercise its right to moderate content or does so "too slowly" in the mind of the defamed when considering defamatory content.

A complete discussion of the "worst case scenario" with association legal counsel is prudent

before the association's social media application goes live. Not all attorneys may even support a social media application, but it is better to find out before the application goes live as opposed to when a demand is received from an allegedly defamed owner.

IV. UNOFFICIAL SOCIAL MEDIA APPLICATIONS

A. The Goal Should Not be to Control Content

With social media on the rise, so too are applications that are not created or controlled by the association board of directors. We recognize that not all intentions are bad, but in many cases, social media applications are utilized solely for opposing the board of directors or the management of the association or are misused for these purposes when the application may otherwise have potential benefits to the community. Repeatedly, we are called upon to counsel an association through the experience of dealing with an unofficial Facebook page. In other situations, Nextdoor is the source of the concern.⁶

The unofficial social media application not only brings the potential for negative content, misinformation, or defamatory content brings the expectation that the association force the administrator of the unofficial social media application to remove content or cease use of the application altogether. The desire to remove the unofficial social media application is typically because the content centers on the negative opinion of decisions of a board of directors, the management of the association, or even the owners. Most publishers on these pages steer clear of defamation, but it does not necessarily mean that the information improves the community experience; in fact, the result, intended or not, most often divides the community. Additionally, inaccurate information or misinformation often serves as the basis for an association's desire to remove content from unofficial applications. With multiple places online to obtain information about the community and the association, it is not always clear to the average owner which application if the official source of association information/communication.

When dealing with an unofficial social media application, we believe that the goal should not be complete control over the content. Expecting to completely control the content of an unofficial social media application and setting out to achieve that end may end up backfiring on the association and giving credence (albeit perceived) to any claims that the board of directors/management is "up to something". The assumption will be that the attempt to control the content means that there may be truth to the

³ Tex. Prop. Code § 202.001(1).

⁴ Tex. Prop. Code §§ 202.002, 202.006.

⁵ Tex. Prop. Code § 202.006.

⁶ <https://nextdoor.com/>

accusation, opinions on the unofficial social media application.

The better aim is to direct the owners to the official sources of association information: board meetings, newsletters, websites, and the association's social media application, if it has one. Rather than attempt to control the bad or unofficial information, direct owners to the good, official information. The association must generate, repeated, if not constant reminders of the official sources of association information.

B. Techniques for Content Concerns

1. Communication with the Administrator of Unofficial Social Media Applications

While the goal to completely control the content of the unofficial social media application may not be realistic or achievable, this does not mean that the association should sit idly by. We recommend contacting the administrator of the unofficial social media application to remove the negative or potentially defamatory content or misinformation or terminate the social media application completely. While the likelihood exists that the request will be ignored and litigation to pursue removal may not be cost-effective and may backfire as previously stated, the association should nonetheless memorialize attempts to contact the unofficial social media application.

A goal of this communication is to distance the association from the unofficial social media application that may have negative or defamatory content or misinformation. To the extent that a defamed party sues the association, this communication will serve as a valuable exhibit in the case thus demonstrating that, not only is the page not controlled/moderated by the association, but that its position is aligned with the defamed in terms of wanting the content removed from the unofficial social media application. Additionally, to the extent that the unofficial application confuses owners about the sources of official association information/communication, the board of directors may answer to the confused owners that steps are being taken to reduce confusion and/or potentially coordinate with the administrator of the unofficial application for the benefit of the community and all owners.

As an alternative to or in conjunction with a demand that content be removed from the unofficial social media application, it may serve the association well to extend an offer to the administrator of the unofficial social media application to try to work together. Preservation and enhancement of property values and improvement of the owners' experience in the community are mostly shared goals. On this platform, we achieved at least some success in dissuading those with opposing views on how the association is run from taking to unofficial social media applications to vent. It is of note that realtors

and buyers use the internet to search communities, and it is a potential end that they will choose another neighborhood if an unofficial social media application contains negative or defamatory content or misinformation. It follows that too much negative content online has the potential to reduce property values in the community.

2. Indirect Response

Whether or not the administrator of the unofficial social media application complies with the request to remove content, the association should consider providing notification to its owners of the official, accurate information regarding the community and where to find it.

While the immediate reaction of many association and their boards is to directly engage with those sharing opposing ideas or to directly post a response on an unofficial application, the association is better served avoiding this approach, in our experience.

Finding that engaging directly with those with differing views seems only to "fan the fire" or somehow validate the position of those with differing views, we believe that the better approach is a matter-of-fact response or bulletin to the owners providing accurate, non-emotionally charged information and directing the members to the correct sources of information. This indirect response or bulletin should originate from an official source of association communication: website, newsletter, e-blasts, the association's social media application, or event presented during a board or member meeting.

This response should also include an invitation to the owners to attend a board meeting or even submit a request for inspection of books and records. Here, reminding our owners that the board and association are transparent tends to steer the discussion to a more productive focus. While anyone is free to disagree with how the association is run, the accusations of fraud, misappropriation, theft, violation of the law (all being the most common examples of negative content that we experience) may lose credibility.

Our audience in the response may not necessarily be the publishers of the negative content or misinformation on the unofficial social media application. Experience indicates that little the association does or says will change the minds of these publishers. Our target audience here is individuals that are listening to both sides, but take the time to investigate, verify information, and formulate their own conclusion.

3. Liability Concerns

The average owner may not be aware of the difference between an official association social media application versus an unofficial social media application. Given the lack of controls on unofficial

social media applications, the potential exists that the unofficial social media application could be used to defame an owner in the community. Given that the association cannot moderate the content on unofficial social media applications, defamatory content may linger. With the perceived notion that the unofficial social media application is controlled by the association, the defamed individual may attempt to seek damages from the association for the defamatory content on the unofficial social media application. While the unofficial social media application may not be controlled or administered by the association, it must be considered that the greater the incidence of participation by the association on the unofficial social media application, the greater the chances that the defamed party argues that the association allowed the defamation to occur through a page ostensibly within control of the association. Thus, it is important for the board of directors of the association to consider the risk of participating on an unofficial social media application at all, even with the most well-founded intentions of the board of directors.

V. CONCLUSION

While we do note an uptick in the number of “social media matters” handled by our firm, we do note that a mentionable volume of associations that utilize a social media application find that the benefits outweigh the burdens. Not every practitioner may agree and not every board of director or even owner may agree; however, the strategies presented in this paper and in the presentation, should assist association practitioners in the counseling of their clients. Hopefully, through the maximization of the good of social media applications while minimizing the bad, boards of directors, management, and owners will note an improved community experience and preserve rather than diver community resources.