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Association Websites – A Powerful Yet Complex Communications Tool

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Increasingly, our community association clients are establishing a presence on the world wide web for a number of reasons: to market their community to prospective purchasers, to distribute information to their members or to foster more direct communications with the Board and management. The first step in developing a community association website is to determine what the association hopes to achieve by developing and maintaining a website. For example, does the association want to disseminate information to members? Does the association want an interactive website where members can exchange information? Does the association want to reduce paperwork by providing online information and electronic forms and applications? Once the general goal is set, the association should consider what features or services the website will provide.

The next step is to secure a domain name for the website. Community associations can register their domain name for a relatively low cost by registering the name with Network Solutions, Internix, Register.com, or any of the other companies that specialize in registering domain names. Unfortunately, the mere act of registering a domain name does not guarantee

that the association will have the right to use that name; some other person/company may own the trademark or service mark rights to the domain name. Therefore, we recommend that our community association clients consult with one of our attorneys before they register a domain name to avoid these pitfalls. Our community association attorneys can discuss with our association clients the process to register a domain name and to verify whether the desired domain name would infringe on anybody’s existing intellectual property rights.

While websites are wonderful tools, they are not free of liability risks. Many websites use clever graphics and symbols to make them attractive and, in some cases, provide the members with access to other valuable services. Websites also provide members with information about various community issues. In providing information to its members, community associations inevitably will want to place information on their website which is owned by another person or entity. Ownership of intellectual property is one of the trickiest issues which community associations will face in the upcoming years. Many of these intellectual property concerns can be resolved in the contract between the association and its website developer. This contract should spell

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out the following: Who owns the intellectual property rights to the content of the website? Who is responsible for ensuring that no one else owns the information and graphics posted on the website? The contract also should provide that the community association owns the intellectual property rights to the content of the website and that the design company is responsible for verifying the intellectual property rights of all graphics and design materials placed on the website. When in doubt on any of these issues, the association should consult with one of our attorneys to ensure that the content of the website does not violate someone else's intellectual property rights.

In 1996, Congress passed a law that limits the liability of a website host for information obtained from their website which was not created by the website host or owner. This law insulates a community association from liability if sued by an angry member over information obtained from a link on the community association website. That being said, community associations may want to avoid links to websites that are not run by governmental organizations because the association has no control over the content of those websites. A disclaimer citing that the Association is not responsible for material on the linked website is also recommended.

Additionally, while Federal law insulates community associations and other website hosts from liability exposure for information accessed through their site which was not prepared by the owner of the site, the law does not protect against copyright infringement in cases where the information was republished on the site without the permission of the owner of the

information. Consequently, associations should obtain permission from the rights holder of information before they publish or reproduce published documents, photographs or other similar materials on their websites.

Websites can be valuable tools for informing the membership of community events, providing members with information about the association's events and for providing general information about the community. Indeed, websites can be a powerful tool for publicizing your community to prospective homebuyers. But associations should prepare their websites with their eyes wide open and with consideration on these legal issues which can turn a website into a minefield full of liability exposure. If you follow these simple suggestions and carefully plan the website in advance, you can avoid these legal pitfalls and safely provide your community with attractive websites that your members will enjoy and use for years to come.