

**COMMUNITY ASSOCIATION.COM:
THE LEGAL MINEFIELD OF THE COMMUNITY
ASSOCIATION WEBSITE**

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As the administration of community associations has become more complicated over the past few years, many community associations have relied on the great advances in computer technology to assist them in providing information to their members. The proliferation of websites and internet users is staggering. It seems everyone and everything has its own website, and society is becoming inundated with *dot coms*. If your association is planning to develop its own website, there are a number of preliminary issues that should be considered.

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. Obviously, most community associations want domain names which are closely associated with the name of their association. However, domain names are subject to State and Federal trademark and service mark law. 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. We recommend that all community associations consult with their legal counsel before they register a domain name to avoid these pitfalls. Legal counsel can walk community associations through the process and verify whether the desired domain name would infringe on anybody's existing intellectual property rights. If the name of your association is not available, the association will have to draw upon the creative talents of its membership to come up with a domain name that both identifies the website as belonging to the association, and does not infringe upon any other trademark or servicemark.

Recently, a number of companies have appeared on the scene that specialize in developing websites for community associations. These companies provide a valuable service. They develop and design attractive websites that provide useful association and community-related information to their membership. Unfortunately, many of these companies are new and often are under-capitalized and do not have the resources to obtain the types of liability insurance that community associations generally require from their contractors. Further, the cost of a contract for a single association is generally insufficient for a smaller webdesign company to justify obtaining general liability insurance. This leads to difficult questions: Should the

association use a professional company to develop their website? Should the association require their website developer to obtain liability insurance? If the website developer cannot afford the necessary insurance, should the association increase the value of the contract so that the developer can obtain the requested insurance? Unfortunately, the answers to these questions really depends on whether the community association website lends itself to significant liability exposure.

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 case, provide the members with access to other valuable services. Websites also provide members with information about various community issues. During this process, community associations inevitably will want to place information on their website which is owned by another person. 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 with the website developer. This contract should spell 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 legal counsel to ensure that the content of the website does not violate someone else's intellectual property rights.

The ownership of intellectual property rights appears to be the most complicated issue related to community association websites, but the most commonly asked questions involve *links*. 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. There is always the danger that children could access objectionable material through materials accessed through a link from the association's website. If a community association decides to incorporate links on their website, it should receive permission from the owner of the other site, and post a disclaimer on their website indicating that the association is not responsible for any materials posted or accessed through the lined website.

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. The association should also consider including a provision in its contract with the website company that requires the website company to indemnify the Association if the website company infringes a third person's copyright, servicemark or trademark right, or misappropriates

a third person's trade secret.

Community associations also should temper their comments about neighboring businesses and organizations. Federal law does not insulate website hosts against lawsuits for defamation or libel. Associations should limit their website postings to factually accurate descriptions of neighboring businesses. Do not provide opinions about the quality of services provided by neighboring restaurants and businesses. To do so merely invites ill will from the neighboring businesses and unnecessarily subjects community associations to liability risks. If a community association accepts advertising on their website, the association should consider placing a disclaimer on the website indicating that the association is unable to guarantee the quality of the service provided by the advertisers and cannot guarantee the accuracy of the representations made by such advertisers.

If a community association decides to retain a website development company to develop its website, the final step in the legal process generally is the execution of the service contract. The contract should spell out the website company's responsibilities and the scope of services to be provided by the company. The contract should address such questions and issues as:

- ❑ Will the association will accept advertising on its website?
- ❑ If so, will the association or website company retains advertising revenue from the website?
- ❑ Does the association have the power to veto any prospective advertisers?
- ❑ Is the website company responsible for updating and maintaining the website?
- ❑ Does the Association owns the contents of the website, including all copyright and other proprietary or intellectual property rights?
- ❑ Is there a set schedule for completion the development of the website.

In general, every website development contract should allow the association to retain the power to approve all content of their website, including advertising. By maintaining that control, associations can minimize the risk of objectionable or actionable material being placed on the website. Likewise, every website contract should include an indemnification clause that requires the website developer to indemnify the association for any breaches of contract, negligence, misconduct or infringement of a third party's intellectual property rights

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.

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