

Social Media and Laws - Dos and Don'ts

3 hours/ 3 Core Credits

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This presentation is a compilation of the most important regulations pertaining to the use of social media and advertising as it pertains to real estate. See list of references on the last page. Interpretation of the regulations is done by the each enforcement authority associated to the regulation.

Note that this presentation does NOT discuss your individual broker additional requirements. Nor does it replace your need to review, interpret and understand the regulations yourself.

Make sure you review your company specific requirements, and remember that all marketing/ advertising activities, no matter the medium used, needs to be reviewed and approved by the broker.

**This handout is for your information only. Please do not share, copy, distribute.
Thank you!**

Definition of Social Media

Social interaction in the virtual world, enabled by the development of web2.0,

Some of the key benefits of social media compared to traditional media are the potential reach, the timing, the permanence and the cost.

Most commonly used platforms in real estate (currently, subject to change):

- Third party social platforms: Facebook, LinkedIn, Twitter, Instagram,
- Public real estate platforms: Zillow, Trulia, Realtor.com
- Tool: Blogging, either yourself or being active on other blogs; advertising platforms like Craigslist

Questions associated with the use of social media:

- Compliance with regulations (Advertising, Fiduciary Obligations, Fair Housing for examples)
- Respect of privacy and confidentiality, data protection
- Ownership of information, copyright rules
- Terms of use of the platforms you are using, or creating your own rules on your own platform

What conversation where and with whom?

- Any environment you will decide to use online comes with "Terms of Use" that you need to be familiar with and adhere to. Of particular concerns are privacy settings, use of the posted information and copyrights.
- Note that if you are creating your own environment, you will need to create your own set of rules regarding its use. See last section for items to consider.
- The world of social media and the internet is a dynamic environment. Consider that what you post is permanent and the audience could change with time. Also keep in mind that on many platforms, your comments/pictures can be forwarded and therefore possibly taken out of context

Compliance

It is important to remember that:

- using social media as a real estate licensee is considered advertising, hence all the advertising regulations will apply (see reference list below)
- the broker has the responsibility of approving and authorizing all advertising *11:5-6.1 (a)*. Refer to your broker's policies for compliance
- Creating marketing material is considered a licensed activity, make sure that if using AI (Artificial Intelligence) for the creation of your marketing material, it is being reviewed by you as the licensee and that you also follow company policies regarding the broker's authorization before publishing
- Don't interfere with existing relationships that consumers have with other REALTORS
- When soliciting clients, make sure you disclose the NJ Business Relationships (CIS)
- Don't practice law. *License Laws and COE, Article*

General advertising rules:

- Always include your broker's business name in a prominent manner
Remember that teams/groups are not licensed entities and cannot appear to be the brokerage
- Refrain from false advertising, misleading and deceptive claims, misrepresentation *11:5-6.1 (r), COE Article 2*
- Be honest and truthful, present a true picture *COE Article 12*
- Only use trade names, insignias, logos, etc.. when permitted by law and make sure you follow the rules associated with the use of those items. *11:5-6.1 (j), SP 12-13*
- No misleading or incorrect statements about other real estate professionals, *COE Article 15*

Money and social media

Monetizing social media:

- Referral fees (google ads for example) – not allowed per NJ Rules and Reg
- Offering prizes, lotteries or contest – not allowed per NJ Rules and Reg
- Endorsements – payments for endorsements is also governed by the FTC

Personal information

Names/ status:

- A licensee always has to indicate his/her licensed name (legal name) **and** the broker's business name (in a prominent place). *11:5-6.1 and SP12-5*
- Make sure status as a real estate professional is clear, *11:5-6.1 (c), COE Article 12*

Phone numbers *11:5-6.1 (d)*

- Advertising any contact information of an individual licensee also requires including the office phone number
- Always identify the various phone numbers, such as home, res., cell, fax,...

Use of REALTOR®

- Using the trademark name should be considered as indicating membership in NAR
- Preferred use is in capital letters with ®: REALTOR®, REALTORS®, REALTOR-ASSOCIATE®
- Do not use with descriptive words or possessive
- In a URL or an email address, you can use with a name

Advertising properties

General information:

- Always include the **municipality** of an advertised property *11:5-6.1 (h)*
- If advertising a property listed by another broker, you must obtain the written consent of the listing broker first *11:5-6.1 (n), COE SP 12-4*
- Listed properties cannot be advertised by third parties (such as mortgage brokers)
- Information has to be updated as needed

Status:

- Cannot advertise **sold** until the property has closed *11:5-6.1 (o)*
- From the end of attorney review to the closing, a property shall be advertised **under contract**

Use of pictures

- Choice of pictures – not misleading, misrepresenting or discriminatory
- Editing pictures – be careful to not misrepresent the property, disclosing the editing is recommended
- Copying pictures – think about the ownership of the pictures (see discussion on copyright)
- Sharing MLS pictures – follow MLS regulations, typically yes to meet your responsibilities to a client, but no for general advertising

Plagiarism and Copyright

Definitions:

Plagiarism: copying information and making it sound like your own

Possible violation of COE, Article 12 – not a true picture in your communication

Solution – always make sure you give proper credit when using someone else's words

Copyright: right owned by the creator of original content (text, images, videos or other)

Any original material created is automatically copyrighted, there is no requirement to register (since 1979)

Infringement of the Federal copyright laws can lead to a civil lawsuit

Also discussed in MLS Rules and Reg, (NJMLS Rules and Reg, Section 11 and 12)

Impact of copyrights when using social media:

- Using pictures –
 - they are your pictures, go ahead
 - someone else took the pictures, get permission in writing
- Information on a listing:
 - Your listing – go ahead
 - Another agent's listing in your own company – check with your broker
 - Another broker's listing – get written permission
- Blogging: be careful when posting information from other sources, get permission to use

Note the difference between linking to other sites (not a copyright issue) versus copying the information on your page/ site/ blog.

Discrimination

11:5-6.1 (i), COE Article 10, Federal Fair Housing Law, NJ Law Against Discrimination

- Discriminatory behavior is not permitted, including hate and harassing speech (SP 10-5)
- Discriminatory advertising is not permitted
 - Use of words
 - Choice of environment
 - Target marketing

Fiduciary obligations/ Confidentiality/ Privacy concerns on social media

Your fiduciary obligations apply to your use of social media:

- Protect and promote the interest of your clients –
 - Watch statements such as “motivated sellers, accepting all offers”, etc.
 - Make sure your clients don’t compromise their negotiation position online
 - Warn them about scams
- Confidentiality – owed to your clients
 - Watch online statements about your client’s interest in a property
 - Refrain from commenting on your client’s behavior online
- Data Protection

Commission advertising and Antitrust

- Commissions can be advertised with the proper disclosure – “In NJ commissions are negotiable”
- Any discussion on any social media environment about real estate commissions need to adhere to the Antitrust Act.
 - There are no “standard commission rate”
 - Legal business models are all acceptable
 - No boycotting

Create your own social media policy:

Your online image as a real estate licensee:

- Name of brokerage, with possible inclusion of logo
- Office phone number
- Your full legal name
- State of licensure

Any additional information your broker requires or you want to add (office address, license status, additional contact information, team name, links, etc.)

Sample terms of use for your own internet presence to consider (check with your broker for potential additional requirements):

- Author and purpose of the blog
- Disclaimer regarding the information posted
- Request to all participants to adhere to various rules/ standard of conduct
- Prohibited activities (discriminatory statements/ conduct, defamation, demeaning/ degrading statements, etc)
- Right to remove comments
- What happens to potential personal information being collected
- Ownership of material being posted.