

THE GIARDINELLI LAW GROUP, APC

Courtside Newsletter

Informing Real Estate Brokers, Association members, and local Businesses for over thirty years.

LEGAL NEWS

- On July 8, Gov. Brown signed SB 221 into law, increasing the Small Claims Court jurisdictional limit from \$7,500 to \$10,000. This law is an effort to expand access to Small Claims court, which can expeditiously resolve relatively small disputes. It is expected to go into effect on January 1, 2012.
- SB 458 was also recently signed into law by Gov. Brown. This law will modify California Code of Civil Procedure § 580(e) to prohibit deficiency judgments upon any note for which the property is the sole security if the note holder agreed to a short sale. For more information, tune into August's Courtside Newsletter!

CALENDAR

Brown Bag - Seminar

Date: September 7, 2011
Time: 11:30 a.m. – 1:00 p.m.
Location: Southwest Riverside
County Association of
REALTORS®

Please contact the Southwest Riverside
County Association of REALTORS® to
sign up!

C.A.R. Expo

Date: Sept. 20-22, 2011
Location: San Jose Convention
Center

Go to www.expo.car.org for more
information and registration!

“Like” My Listing? Maybe Not!

BY: KELLY A. NEAVEL
ORANGE COUNTY OFFICE



Social networking is increasingly popular in the real estate world. Many real estate agents, REALTORS®, and brokers are using social networking websites to notify their “friends” and “followers” of property listings. Surely this act seems innocent enough, but the agent, REALTOR®, or broker could be violating state law, NAR’s Code of Ethics, MLS rules, and possibly federal law. Several issues arise when using social media sites to post listings, whether it’s the agent’s, REALTOR’S®, or broker’s own listing, or that of other brokers.

The first issue is stale postings. A stale posting results when an agent, REALTOR®, or broker posts a listing on his or her blog, Facebook or Twitter page and then the house sells, the listing expires, or the owner withdraws the property, and the listing is not removed or updated. Very few agents, REALTORS®, or brokers remember to go back and delete these postings from their sites. Postings on the internet do not have a shelf life. A person can search for a property on the internet and these old postings that are now inaccurate and misleading can come up. The problem with these old postings is that they do not automatically update as changes are made in the MLS to reflect a change in price or status. In Article 12 of the 2011 Code of Ethics and Standard of Practice of the National Association of REALTORS® (NAR Code of Ethics), Standard of Practice 12-8 requires REALTORS® to promptly take corrective action when they become aware that information posted on one of their websites is no longer current or accurate. This means that REALTORS® have an

obligation to go back and remove any postings on their blogs, Facebook or Twitter accounts, or at least to update the information to reflect the current status of the listing.

The second issue is another possible NAR Code of Ethics Article 12 violation. Article 12 requires agents to present a “true picture” of the advertisement and to include their license number and contact information on every page of their advertisement. It is virtually impossible to comply with Article 12 in a 140 character tweet as allowed on Twitter. Standard of Practice 12-5 does provide for an exemption from this disclosure requirement but only when the advertisement is linked to a display that includes all required disclosures. When agents, REALTORS®, and brokers post one of their listings on a social media site, they must include all of the required information in order to be in compliance with Article 12.

The third issue is the fact that postings on social media sites are considered advertising. Advertising is defined as any activity that is intended to attract potential customers, including websites, social media sites, and blogs. Basically, any communication between a broker and the public is advertising. However, there are factors that could possibly allow a posting on a site like Facebook to fall outside the realm of advertising, such as: (1) if the post consists of only a link to the actual listing on the IDX site; or (2) if the Broker’s privacy settings on Facebook allow only a small number of “friends,” consisting of only clients, to receive the listing. Either of these

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scenarios could be seen as delivering information in the context of the brokerage relationship. However, there is a fine line. It is safer to assume that any listing on any social media site is considered advertising and all state laws and rules must be followed.

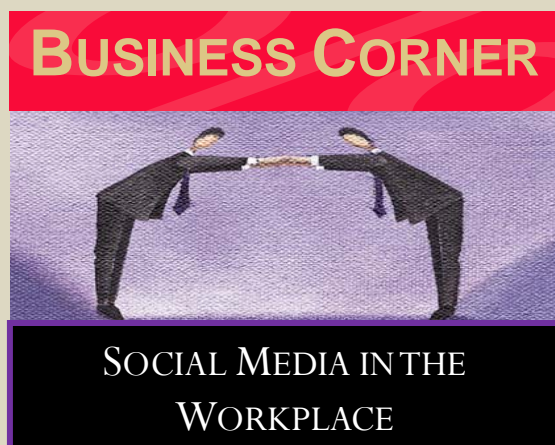
subject of an ethics complaint filed with their local Association for advertising without authority.

Social media is a fast way for the busy agent, REALTOR®, and broker to disseminate information. Brokers need to make sure their agents are not violating any state real estate laws or the NAR Code of Ethics. All brokers need a social media office policy in place that defines how agents and REALTORS® can specifically use social media sites and to ensure that expired or sold listings are removed from any social media site.

Lastly, Article 12 of the NAR Code of Ethics and the NAR Model MLS Rules and Regulations prohibits advertising of another broker's listing without permission. Pursuant to state licensing law, a person can only list or advertise the property if he or she has a contract with the seller. As such, only the listing broker can advertise his or her own listing. NAR has recognized these issues with social media sites and has indicated that they will be addressed at the next meeting. Until then agents, REALTORS®, and brokers need to be careful when they post another broker's listing on their Facebook, Twitter or blog, or they could be the

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Biography
Kelly A. Neavel manages the Orange County Office of The Giardinelli Law Group, APC.



Of late, it has become painfully obvious that social media is not a fad. Rather, it has seeped from our personal lives into our professional lives and has even become a way of life for some. Many companies have employees dedicated to social media marketing; however, some companies are still being left behind. Social media has a place in the workplace, but it is one that must be defined for employees and employers alike.

In a recent article in The Business Press, Sarah Cullin points out five things that HR directors need to know about social media:

1. **Social Media Policies:** If your company does not have a policy already in place, it needs one. Such a policy should describe what sites employees are allowed on, when they are allowed on, and the amount of time they can spend there.
2. **Guidelines:** Your company's social media policy needs to have guidelines about what can and cannot be said about the company on a social media site. Often, things that are tweeted in the heat of the moment can get back to the employer and have serious ramifications for the employee later on. Be clear about what is and is not acceptable.
3. **Dangerous Territory:** Employees need to be warned about the dangers of social media—from the horror stories of telling every aspect of one's personal life to even something as mundane as posting pictures from last weekend's trip to the River.
4. **Legalities:** Advertising job openings on social media sites alone can open a company up to legal action. HR directors and senior-level managers need to understand this fact as well as other potential legal ramifications of using social networking.
5. **CEOs:** CEOs also need to be involved in their company's social media marketing. It is important for them to realize the impact it can make, as well as how to utilize it.

For assistance in drafting a social media policy, or if you have any questions regarding your current policy, contact an attorney. Social media is a burgeoning field full of potential for your company, so long as it is gone about the right way.

For the full article in The Business Press, "Five things HR directors need to know about social media," go to www.thebizpress.com.

IMPORTANT UPDATE!!

In TGLG's May Courtside Newsletter, J Niswonger's article "Of MARS and Short Sales" touched on the new federal law regarding those who provide Mortgage Assistance Relief Services (MARS). More specifically, the article discussed how real estate agents, brokers, and REALTORS® would be affected by this law. The law was designed to protect home owners from sharp sales tactics; however, at the time the article was published, the Federal Trade Commission (FTC) was still reviewing the law as it affects real estate practitioners.

According to a recent article in REALTOR® Mag, on Friday, July 15, the FTC announced that it would no longer enforce certain aspects of the MARS rule against real estate practitioners. In particular, the FTC said that practitioners in good standing will be exempt from the "obligation to make disclosures and from the ban on collecting advance fees." It was found that these disclosures could be confusing to consumers and inaccurate when coming from a real estate professional. The law was drafted to target companies that were charging high fees to consumers seeking mortgage assistance. However, due to the rise in short sales and real estate professionals assisting consumers with them, the FTC recognized that it is important to interpret the law in such a way as to avoid discouraging real estate professionals from assisting buyers and sellers from obtaining short sales. The FTC has decided that most of the provisions of the MARS rule will not be enforced against real estate agents, brokers, or REALTORS®.

In spite of this new announcement, though, it is important to make sure you are still acting within the law when assisting with a short sale. Should you have any questions, please contact an attorney. It is always better to be safe than sorry.

To review the full article in REALTOR® Mag, "FTC No Longer Enforcing Parts of MARS," go to www.realtormag.realtor.org.

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