



## 5 Risks of Social Media

You have a great listing that you can't wait to publicize, so you do what so many people do these days: You send a tweet to your followers on Twitter, post an update on Facebook, and maybe even write about it on your blog. After all, isn't that what the new social media revolution is all about—getting information out instantaneously to all your connections? But social media isn't without legal and ethical pitfalls.

### RISK #1

#### FAILURE TO COMPLY WITH REAL ESTATE LICENSING LAWS AND REGULATIONS.

Everything done in connection with your real estate business is likely to be governed by state laws and regulations that are designed to protect the public. That includes your use of social media to attract buyers and sellers. For example, if you're using Twitter and regulations require disclosure of the broker's name in your communications, check to see if you can link to a Web page that includes the information to satisfy the disclosure requirement. You have a right to disagree with a law or regulation, but not to ignore it.

### RISK #2

#### DEFAMATION AND LIBEL.

False statements about other people or their businesses that are made by you and expressed as facts can be the basis for legal liability. There are examples of blogs, including in the real estate business, in which blog authors have been sued. In general, you will not be liable for libel or slander based upon the comments of others posted on your blog or other social media site, under a provision within the federal Communications Decency Act. However, you still want to be aware of everything that's being said on your site. The fair housing community has expressed concerns about real estate-related sites that contain any statement, regardless of who the author is, that might be interpreted as expressing a preference in connection with a protected class.

### RISK #3

#### COPYRIGHT INFRINGEMENT.

Copyright laws protect the original expression of authors and include all kinds of different works including books, articles, photographs, drawings, and videos. Using the work of others as a part of your social media communications without

## Short Sales Ethics: 6 Temptations to Avoid

As frustrating as the short sales process can be, there's no excuse for taking ethical short cuts to get transactions closed. Here are ethical temptations you want to avoid at all costs when working with a client whose property is on the market as a short sale.

**1. Standing in the way of home-retention efforts.** Lenders' first responsibility is to help owners who want to stay in their home do so. If the lender approaches them with a good-faith effort to modify their mortgage, let them out of the agreement.

**2. Embellishing the hardship letter.** Your job is to help your clients be as accurate as possible when they describe their degree of hardship to their lender. Helping to prepare a letter and other documents that aim to mislead or obfuscate is never justified.

**3. Shopping the buyer's offer.** Short sale transactions require too much of a commitment on the buyer's part to try to get a better deal for your sellers at the last minute. If a buyer has made a good-faith effort to offer market value, don't seek higher offers.

**4. Selling to a flipper.** Unless the investor in a flip is prepared to add substantial value by fixing up a property, don't participate in a flip. Short sale flips benefit only the investor, who's clipping off money that could go to an already bleeding lender.



the owner's permission is always risky. Just because you see something on the Internet or in your MLS does not mean you're authorized to use it in your messages. You may have heard something about a legal defense to copyright lawsuits called "fair use." This does exist, but it's a complicated balancing test and unless you're very familiar with copyright rules, relying on the concept of fair use will still leave you at risk. The Digital Millennium Copyright Act includes a safe harbor provision for people who operate social media Web sites such as blogs, which allow others to post information or comments. There are, however, a number of very specific requirements that are a prerequisite to taking advantage of this safe harbor.

#### RISK #4

#### TRADEMARK INFRINGEMENT.

Using a trademark without permission, or exceeding the scope of permission, can result in liability. This includes the trademarked term REALTOR®; it's generally not OK to use any descriptive word or phrase, including the names of cities or communities, to modify the term REALTOR® or REALTORS® in your blog name, Twitter handle, or Web site address.

#### RISK #5

#### AN ETHICAL BREACH.

Separate from legal liability, REALTORS® pledge to abide by the REALTOR® Code of Ethics, which addresses many of these same issues. Both Article 12, the duty to honest and truthful in real estate communications, and Article 15, the duty to avoid knowingly or recklessly making false or misleading statements about others in the real estate business, have obvious applications in the social media world. The Code's requirements may duplicate, or in some instances exceed, the standards required by law.

Michael Theil is associate counsel, Legal Affairs, for the NATIONAL ASSOCIATION OF REALTORS®

**5. Shifting funds off the HUD-1.** If a junior lien holder or other party to the transaction asks for payment, undisclosed on the HUD-1 statement, as a condition of approving a short sale, advise your client to say no. That can constitute mortgage fraud.

**6. Manipulating the BPO.** It's appropriate to control access to the information that goes into your broker price opinion but not so you can get a house on the market for less than it's really worth.

Scott Thompson is vice president of ServiceLink, a national lender platform in Rancho Cordova, Calif.

## When a colleague does something unethical, how do you respond?

**I confront the person** and ask him or her to refrain from breaking the rules in our Code of Ethics. If the response is "everybody does it," I say: "We may be seeing you soon in a hearing." *Jim Bauknight, Bauknight Realty, Houston*

**I always speak to my broker about it, and our brokerage usually notifies the parties involved of our opinion in writing.** This helps our brokerage manage its risks. *William Ashworth, GRI, Oregon Realty Co., Portland, Ore.*

**It's more appropriate for the broker to handle it than me. When it comes from the broker,** the communication carries more weight and seems to change the problem behavior, if only for a short time. *Ginger Saavedra, Wynn Realty Group, Las Vegas*

**First, call the agent out on the issue, then investigate the allegations and see what the best remedy is.** If the allegations are true, a reprimand is best. If problems persist, it's appropriate to **file a formal complaint** with the local association of REALTORS®. *Bill Hoyle, Sun Realty, Naples, Fla.*

**Many issues can be addressed simply by discussing the problem with the agent and the agent's manager.** If the issue is the result of an honest mistake or involves something I can't prove, I don't do anything. When the acts are intentional, reckless, or damaging, it should **go to an independent body for hearing and judgment.** I've personally filed two ethics complaints. *Aaron Dickinson, Edina Realty Inc., Plymouth, Minn.*

**I speak to the person directly.** If it's a serious violation, I go to that person's broker as well. If they respond that they've done nothing wrong, or if they don't change their actions, I file an ethics complaint with the local association. *Anne Rubin, CRS®, GRI, Century 21 Advantage Gold, Philadelphia*

**I encourage newbies, if they believe there's been an ethical violation, to go to their broker.** Because of their lack of confidence, their tendency is to keep quiet; they assume the other person knows more than they do. But they're recently steeped in best practices from their pre-licensure classes, so they're often right. *Reba Saxon, GREEN, GRI, Teacher Realty, Austin, Texas*

