

**Checklist for Drafting a Blog Policy**

**I. Terms of Use (TOU) for the website**

- a. Will the blog have the same TOU as the Association of REALTORS®'s (AOR) website?
- b. If not, what TOU may be necessary for the blog, if any? Consider the following:
  - i. Users' use of the blog is binding acceptance of the TOU
  - ii. AOR may modify the TOU at any time without notice
  - iii. AOR has the right, but not the obligation, to any of the following actions in its sole discretion at any time and for any reason without giving user prior notice:
    1. Restrict, suspend, or terminate user's access
    2. Change, suspend, or discontinue all or any part of AOR's services
    3. Refuse, move, or remove any material that user submits
    4. Deactivate or delete user's accounts and all related information
  - iv. AOR shall have no liability for taking action pursuant to TOU
  - v. AOR disclaims endorsement of any third-party content or a link to a third-party site
  - vi. AOR's disclaimer of liability and warranty
  - vii. Indemnification of AOR
  - viii. Dispute Resolution provision
    1. Arbitration? Mediation? Litigation?
    2. Jurisdiction
    3. Time limitation on bringing a claim
- c. Where will the blog policy (and/or TOU) be posted on the website?

## II. Access to the blog

- a. Will the blog be hosted on the AOR website or on a third party website such as Blogger.com, Blogcatalog.com, or Wordpress.com?
- b. Will the blog be open to the public, have selective membership, or be located behind the association's firewall?
- c. Is registration at the site required? If so, what information is required?
  - i. May a user post anonymously?
  - ii. If information is required demand that it be true, accurate, current, and complete.

## III. User Generated Content

- a. User agrees not to use the site to take certain actions, for example:
  - i. To defame, abuse, harass, or stalk
  - ii. To publish or upload inappropriate, profane, obscene content
  - iii. To advertise or offer to sell any goods for commercial purposes; to transmit surveys, contests, spam
  - iv. To falsify or delete any author attributions
  - v. To collect or store personal information about other users
  - vi. To impersonate any person or entity
  - vii. To engage in illegal activities
- b. AOR disclaims accuracy, integrity, or quality of the content of the posts (i.e., "Without limitation, AOR is not responsible for postings by users in the user opinion, message board, or feedback sections of AOR's website.")
- c. Must a user certify that he owns all IP rights to the content he posts?
- d. Does a user grant AOR all IP rights to modify, publish, transmit, participate in the transfer or sale of, reproduce, create derivative works of, etc.?

- i. Irrevocable? Royalty-free? Nonexclusive? Sublicense?
- e. Must a user agree to send and receive messages and material that are proper and related to that particular blog?

#### IV. Managing the blog

- a. Will AOR review each comment before posting it to the blog?
  - i. If so, what criteria will be used to evaluate the content of the comment?
  - ii. Will AOR reserve the right to edit or just reject the comment?
  - iii. Communications Decency Act § 230(c)immunity
- b. Should there be a restriction on content in regards to antitrust? For example, VAR uses the following language in its TOU:
  - i. Members shall not discuss with any competitor their individual company policies relating to prices or related types of sensitive information, including (a) commission levels, fees, business expenses or other business information or policies which would allow or encourage price fixing or maintenance; (b) bids on contracts for particular properties or any information which would allow or encourage bid rigging; (c) a firm’s competitive business decisions; (d) duration or types of listing agreements the firm will enter into or the form of compensation the firm will accept or negotiate; (e) the compensation offered or paid to a firm’s agents or employees; (f) plans concerning any proposed or existing customers, clients or territories; (g) any other actions that might be construed as concerted attempts to restrain competition, including joint attempts to control or affect prices, market conditions, marketing practices, customer choice, or the like.

It is the responsibility of each member to avoid raising improper subjects for discussion. However, if discussion of any inappropriate topics occurs on the blog, all members participating in the discussion should openly disassociate themselves from such discussions, and inform VAR immediately.
  - ii. <http://varbuzz.com/terms-and-conditions-of-use/>
- c. Will AOR offer users the opportunity to request that content be removed from the blog?

- i. If so, how will this determination be made?

## V. Copyright Policy

- a. Who owns the copyright of material that is posted to the blog by an AOR employee?
  - i. Are there reasons why AOR would want to reserve all copyright to certain material (i.e., editorials) and not others?
- b. Who owns the copyright of material that is posted to the blog by a non-employee poster?
- c. What type of permission, if any, does AOR want to give others for using the content? May third parties modify, publish, transmit, participate in the transfer or sale of, reproduce, create derivative works of, etc., any of the materials or content on the site or in a blog/comment? Consider the following:
  - i. None – All rights reserved
  - ii. Limited license specifically setting forth the acceptable uses
  - iii. Creative Commons license (e.g., Attribution-ShareAlike Creative Commons Public License) <http://creativecommons.org/>
- d. Permissions and Reprints
  - i. What use of the content will be permitted?
    - 1. Personal, noncommercial?
    - 2. Commercial?
  - ii. Will AOR require an attribution clause (e.g., “Copyright National Association of REALTORS®, Reprinted from REALTOR®.org with permission.”)
    - 1. Should the attribution clause state, “All rights reserved.”?
  - iii. Are there any uses that will require written permission from AOR?
    - 1. If so, how does a user obtain that permission?
  - iv. Are there any uses that will require the user to pay a licensing fee?

- v. May users link to AOR's blog?
- e. Should AOR provide steps for notification of an infringement pursuant to the DMCA?
  - i. Has AOR registered a designated agent with the Copyright Office pursuant to 17 U.S.C. 512(c)?

#### **VI. Retention of the blog posts**

- a. How long must AOR keep record of a blog post?
  - i. What is the AOR's document retention/deletion policy?
    - 1. The new Form 990 asks whether the entity has a document retention policy in place.
- b. Is the blog post a business record and therefore discoverable for the purpose of litigation?

#### **VII. Employee guidelines for posting**

- a. Does AOR want to create guidelines that employees must follow when blogging on their own time or on non-association websites?
- b. What type of communication, if any, should be restricted?
  - i. E.g., obscene, offensive, discriminatory, disparaging, defamatory, harassing
  - ii. Anonymous posts
  - iii. Gossip, rumors, lies, falsehoods, personal attacks
- c. Must the employee disclaim that his or her opinions expressed in the blog are personal opinions and do not reflect the opinions of the AOR?
- d. Has AOR sufficiently informed employee that he or she should have no expectation of privacy when using employer-provided equipment?