

# **Virginia**

## **Regulatory Hot Tip 2014 – 7**

*Professional Insurance Agents Association of Virginia and DC, Inc.*

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### **Why use a Website Disclaimer?**

When consumers are seeking medical advice, car insurance quotes or the best price for a cute pair of 6" stiletto heel shoes, a few clicks on the computer or smart phone provides them with all the information they need. Gone are the days when the only option was to find a trusted (bonded or licensed) professional to answer your question. Today with over 7 billion worldwide users of the Internet<sup>1</sup>, there is an odd and trusting relationship that the public has with the information they find there. Decisions are carelessly made concerning financial and physical health, safety and family stability on the basis of what someone reads on a computer screen. Even well educated and sane individuals have engaged in crazy home remedies because they read on the Internet that it speeds up healing. As a consumer, when something you read on your computer causes financial or physical harm; who is at fault? Is it simply, "buyers beware"? Can a company limit its liability?

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<sup>1</sup> [http://en.wikipedia.org/wiki/Global\\_Internet\\_usage](http://en.wikipedia.org/wiki/Global_Internet_usage)

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The author of this Regulatory Hot Tip endeavors to provide accurate and authoritative information about the subject matter covered as of the date of publication. However, the substantive information and any statutory authority contained in this Hot Tip should be verified as they are subject to change with the passage of time. The author provides this Hot Tip with the understanding that she is not rendering legal, accounting, or other professional advice or counsel. If legal advice or other expert assistance is required, the services of a competent professional should be sought. This publication is authored by Kayleigh A. Glass, part-time, administrative assistant to JoAnne L. Nolte, JD, CIC, CPCU, FLMI, CLU. Kayleigh is also a rising senior at Virginia Commonwealth University majoring in creative advertising.

Jo is an attorney at The Nolte Law Firm, P.C., 1427 W. Main Street, Richmond, VA 23220. NolteLaw offers Solutions for Business—Large and Small; just call (804) 658-4518. NolteLaw's practice focuses on general business matters (such as business formation, acquisitions, dissolutions and employment questions) and administrative law issues (such as rulemaking and compliance) affecting regulated entities. Our diverse client base includes restaurants, healthcare providers, contractors, fiber-optic and conduit installers, business entrepreneurs, telecommunications companies, insurance entities, financial institutions, mortgage loan originators, water & sewer providers, and insurance receiverships. Jo has served as attorney for the Virginia State Corporation Commission and as in-house counsel to a privately owned national corporation. She also owned and operated an insurance surplus lines brokerage agency and an insurance consulting business.

You may think your website doesn't require a disclaimer, but no matter how brief, a disclaimer is an important aspect of legally protecting yourself. It's your way of stating the terms under which people access and use your information, explaining your obligations and theirs.<sup>2</sup> A disclaimer page is a space to inform visitors as to your website's limits; for example that the content on your website is informational only, making it clear that visitors should use their own discretion when using the content posted on your site. In other words – you (and your firm) can perhaps limit your liability for damages should someone use information from your site and that information inadvertently causes harm to the user.

It's important that disclaimers be obvious and visible to your readers, ideally located on the bottom of every page of your site. If people cannot find your disclaimer, they will not read it and thus are unaware of your website's limitations. Thus the unread, difficult to find disclaimer may not offer you necessary and full protection. Be explicit about the purpose and implications of the disclaimer. Examples are topics such as:

- Stating who can use the website and for what purposes,
- Extent of the site content (currency and validity),
- Ownership rights to the information if published,
- The rights to remove or reproduce content on your site and
- The right to limit your liability for viruses, etc. obtained from your site.

Some blog and web space hosting sites provide these disclaimers for you. In order to protect yourself further, look into extensive disclaimers you can add that might work in conjunction with the generic web hosting ones that cover your site along with the others under the same domain. This is especially important for sites that include your business affiliation or website.

The addition of a disclaimer to your website might not seem immediately relevant. When you post information online, you must consider the consequences of someone taking a post to be factually true, legal or actual life advice. It is important to state clearly if the information on your site is true that your site's content may be informational and that readers must use discretion when using the information on your page to make decisions. Similarly, you may want to include a note about advertising, explaining that advertisements or reviews posted on your website may not be considered endorsements or indeed your own views.

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<sup>2</sup> Website Disclaimers – Why Have Them and What Should You Include? At <http://www.ictknowledgebase.org.uk/websitedisclaimers>

Typically, the best way to create a disclaimer is to tailor it to the function it should serve. Website functions include sites that represent the corporate entity, provide an e-commerce capability, branding, marketing/advertising, information and blogging. The focus is mainly on what is valuable and what isn't to the reader. Since the informational aspect often involves copyrighted material, one must be aware and always provide the appropriate references to support any factual information or ideas on the site. If an advertising approach is taken, make sure that your disclaimer functions properly for your purpose.

Keeping your website fresh and current with new information encourages your visitors to come back often. As the website is evolving, remember that close attention must be directed to the disclaimer so that it continues to cover you from liability claims. After all, isn't it your goal to have consumers visit your site often? Consumers that develop trust and confidence by using your site can be your best ally.

Being compliant with State and Federal regulations and applicable laws should be acknowledged in your disclaimer. For example, if your geographic customer-base reach is limited by licensing, be sure to set forth where you are able to do business. We have all seen television commercials with disclaimers indicating that an insurance product can only be offered in certain states. If your site isn't interactive, the disclaimer you provide should say so, as well as it should be specific as to how the reader should contact you.

The value of a website disclaimer also depends upon the technical skill with which it was drafted. The cost of engaging the services of a risk management consultant or lawyer that has the expertise in your line of business to help you with your disclaimer is a sound investment. The information provided in this article is for educational purposes only. It should give you general information and a general understanding of the contents necessary for a good website disclaimer. The information provided in this article should not be used as a substitute for competent professional advice from a professional liability risk management consultant or from a licensed attorney in your state.