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Defamation, Libel and Slander – Oh my!

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When someone mentions defamation, libel or slander, it brings to mind big lawsuits filed by celebrities against tabloid magazines contesting the juicy story that is plastered across the cover. However, defamation, libel and slander are also issues that community associations potentially face. The purpose of this memo is to provide you with information regarding these three concepts and to provide practical tips to assist Board Members and community managers.

According to the 8th edition of Black's Law Dictionary, defamation is the "act of harming the reputation of another by making a false statement to a third person." Slander is the making of defamatory statements orally. Libel involves the making of defamatory statements in fixed medium, such as a newspaper, magazine, sign or picture.

Elements of Defamation

To prove defamation, the complaining party must show the following:

- There was a false and defamatory communication made concerning another;

- The false communication was then published to a third party;
- The communication was about the complaining party and that another person receiving the communication could identify the complaining party as the subject of the message; and
- The complaining party must show that the communication caused his/her reputation to be damaged.

Defenses to Defamation

There are three general defenses to defamation applicable to community associations:

- The truth
- Consent by the victim for the publication of the defamatory statement
- Accidental publication

Preventing Defamation

Now that you are fully versed on the elements and defenses to defamation, libel and slander, here are some actions that the Board can take to ensure that the Board doesn't defame someone.

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1. At meetings, Board members and management should be careful not to say things about other people that are either factually inaccurate or not supported by the information. An example of this would be a statement that “Mrs. Smith never cleans up after her dog in the common area by the tot lot.” If this is simply a guess based upon the fact that Mrs. Smith and her dog are often seen in that area, the statement could be defamatory. The better approach would be to make a statement that “We have seen Mrs. Smith and her dog in that area frequently and are concerned that she may not be cleaning up behind her dog.” This way, it is a fact based statement combined with a question instead of an announcement of a fact to the people present at the meeting.

2. Control the flow of information for content and accuracy. Often, community associations ask for residents to contribute to the association’s newsletter. Because the newsletter is being published by the association, a party injured by statements in the newsletter may pursue a claim against the association. Also, some associations publish lists of owners who are delinquent with their assessments. If an owner’s name is on the list and in fact, they are not delinquent, the release of that information may subject the association to a claim.

3. Make sure that you have enough facts to support your conclusions. If the Board has information to share with the community that is negative, be sure that the information is accurate. For example, if the association sends out a notice to the membership that identifies the name and address of a registered sex offender in the community – make sure that information is accurate before sending it out. Taking some time to

confirm facts and information prior to sending potentially defamatory information out to the community could save the Board a lot of expense and legal issues in the future.

4. If you make a mistake in publishing or saying something, make a correction as quickly as possible. If the newsletter goes out and an error is in it that relates to a statement regarding someone, a retraction or correction should be sent out immediately. Since one of the elements of defamation is that the false information must have a negative impact on the victim’s reputation, a quick correction may prevent that from occurring.

By following these simple tips outlined above, Board Members and managers can help ensure communications, written and verbal, are accurate. This will allow them to safeguard against defamation claims.

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