

Defamation, Libel and Slander— Oh, My!

To avoid claims of defamation, community associations should publish clear terms of use for any social media applications they are utilizing to formally disseminate information on behalf of the association. Such policy resolutions should permit the association to remove any content that may be considered defamatory, private or confidential.

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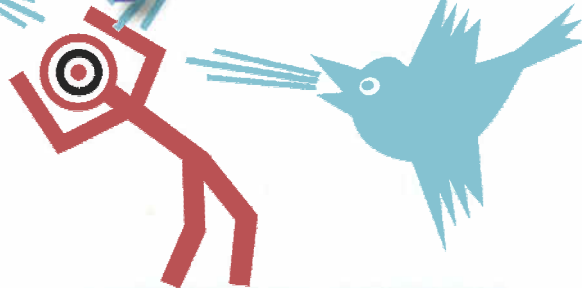
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Usually when one thinks of defamation, it is in the context of celebrities, tabloid magazines and public scandals—topics far removed from daily community association life.

However, defamation, libel and slander are very real concerns for community associations, especially in the context of social media. It seems like each day there is a new social media tool or application being introduced into the public. People are constantly “liking,” “tweeting,” “linking,” and “pinning.” While Facebook, Twitter, LinkedIn, Pinterest and the like are great tools for maintaining our personal connections, community associations are grappling with whether to integrate such tools into their standard practices.

When community associations do utilize social media tools, they need to be mindful of the actual content being disseminated via these platforms. In some cases, a board member, manager or another owner could be posting a statement deemed defamatory without even intending to or realizing it.

Defamation is generally defined as the act of harming the reputation of another by making a false statement to a third person. Slander is the making of defamatory state-

ments orally. Libel involves the making of defamatory statements in written or 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 reputation to be damaged.

Defenses to Defamation

The general defenses to defamation applicable to community associations are as follows:


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

- Opinion
- Comments on a fair public matter (such as a governmental hearing)

In the context of social media, defamation can occur, for example, when a community association maintains a Facebook page and an owner posts a comment criticizing an individual board member or management. While the owner's statement may be critical of the way the association is being operated, the question of whether such criticism constitutes legal defamation will depend on how the statement is framed. If the statement is clearly framed as the owner's opinion, then there may not be a claim of defamation, even though the opinion may be damaging nonetheless. Likewise, if the statement made is factually correct, then there may not be a claim of defamation either. In some instances, a statement made at an open board meeting or on a community-sponsored website or blog may be considered to be fair comment on a public matter depending on the circumstances.

To avoid claims of defamation, community associations should publish clear terms of use for any social media applications they are utilizing to formally disseminate information on behalf of the association. Such policy resolutions should permit the association to remove any content that may be considered defamatory, private or confidential.

Furthermore, before making any posting, community associations should verify 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, the association must 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.

If an association makes a mistake in the information being published or provided, the association should make a correction as quickly as possible. Lastly, associations should confirm with their insurance carriers that there is insurance coverage for defamation claims under the association's insurance policies. 

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