

Defamation 101 for Community Associations

Written By **Hannah M. Daigle** (hmdaigle@wardandsmith.com) and **Allen N. Trask, III** (ant@wardandsmith.com)

July 5, 2024



It is no secret that community associations and boards are subject to frequent scrutiny.

Such scrutiny comes in many forms, including statements targeted at the board from a disgruntled community member, assertions from board member to board member, or statements from the board toward a community member. But when does such "scrutiny" rise to a level of

actionable defamation? This article will outline what is and what is not defamation, and what you can do if you have experienced actionable defamation in the context of community associations.

Defining Defamation

Defamation is generally known as false statements made against a party that injures the reputation of that party. Defamation comes in two forms: libel and slander. The difference between the two comes down to whether the defamatory statements are written or spoken. If written, such as in a social media post or a widely disseminated letter or email, false statements will constitute libel. If the false statements are spoken, this is slander.

In North Carolina, a successful claim for defamation, whether it be under libel or slander, requires the plaintiff to prove four main elements: (1) the statements are false; (2) the statements concern the plaintiff; (3) the statements were published to a third person; and (4) the statements caused injury to the plaintiff's reputation. Each of these four elements must be present for a defamation claim to succeed.

The most important element in proving defamation is that the statement must be false. In fact, truth is an absolute defense to any defamation claim. Essentially, no true statement, regardless of how hurtful or embarrassing the statement may be, will be considered defamation. Additionally, merely stating one's opinion or dislike of someone does not constitute defamation, as it is not asserting a provable fact. The second element requires that the statement must involve the suing party. One cannot initiate a suit for defamation if they are not named or alluded to in the allegedly defamatory statement. Regarding element three, the statement has to be communicated to a person or multiple people other than the person suing for defamation. Finally, the last element requires that the plaintiff show some evidence of injury. This means that the plaintiff must be able to point to a monetary loss that occurred as a result of the defamatory statement. Note that if any of these elements are not met, the suit for defamation will ultimately fail.

There is one exception to proving the fourth element, that exception is *per se* defamation. Slander or libel *per*

se is a specific type of defamation, which is particularly harmful, and thus, injury is inferred from the publication, with no need to further prove the harm. There are four specific categories of defamation *per se* in North Carolina. Those categories include that the publication or statement:

1. states that a person has committed an infamous crime;
2. states that a person has an infectious disease;
3. tends to call into question a person's trade or profession, or
4. otherwise tends to subject one to ridicule, contempt, or disgrace.

If the defamatory statements that you experienced fit any of these categories, you will only need to prove elements 1-3 above.

Public Figures, Limited Purpose Public Figures, and Private Figures

One additional factor that you must consider when deciding to bring a defamation claim, especially in the context of community associations, is whether or not you are a private or public figure. If you are considered a public figure, proving defamation will be more difficult. A public figure is defined as a person who has assumed a role of specific prominence or thrust themselves into the public eye. The law does not list specific jobs or roles that fit this definition. However, common examples of public figures in caselaw are politicians, candidates running for office, and celebrities. Note that someone could be considered a "limited purpose public figure" by a purposeful thrusting of himself into an important public controversy. A limited purpose public figure may be someone who is well-known in their community or known due to notable input on a particular topic. Ultimately, it is up to the court to decide as a matter of law whether or not a plaintiff is a public figure, a limited purpose public figure, or a private figure.

Public figures and limited public figures have a heightened standard of proof, they must prove "actual malice" on the part of the defaming party. A private figure need only prove negligence. The difference between the actual malice and negligence standard is notable. Negligence amounts to carelessness or sloppiness. For example, it would be negligent for a reporter to publish false information that she did not thoroughly investigate, even if she personally believes it to be true. However, to publish a statement with actual malice, it must be published with the knowledge that it is false or with reckless disregard for whether it is false or not. Using the same example as above, if a reporter knew a statement was false, or had strong reason to believe it could be false, but continued to publish the statement as if it were true, this amounts to actual malice.

Though North Carolina courts have not ruled on the issue, courts around the country have held community association board members to be a limited purpose public figures in defamation cases. For example, in a New Jersey case, the court found a candidate running for the community association's board of directors, as well as those currently serving on the board of directors, to be limited purpose public figures, thus requiring them to prove actual malice when suing for defamation.

While it would ultimately be up to the court to decide, the possibility of being classified as a public figure or a limited purpose public figure is certainly something to consider when deciding whether or not to bring a defamation lawsuit. Based on out of jurisdiction caselaw, there is certainly reason to believe that a North Carolina court could find a community association board member to be a limited purpose public figure. Depending upon your role in the community association and the various definitions above, you should at least consider your ability to prove actual malice on the part of the defaming party.

Conclusion

If you believe that you have a case for defamation, it is important to act quickly. The statute of limitations in

North Carolina mandates that a defamation claim must be brought within one year of the publication of the defamatory statements. Navigating this area of law under this strict time constraint can be challenging. If you believe you have a claim for defamation relating to a community association matter, do not hesitate to reach out to our community associations team at Ward and Smith.

This is a part of our July series: "Rights, Responsibilities, and Regulations." For more insights, click here.

--

© 2024 Ward and Smith, P.A. For further information regarding the issues described above, please contact Hannah M. Daigle or Allen N. Trask, III.

This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.