

Defamation and Strata Title – What to do when things get heated

Things can get very heated in a strata context. Disputes can be very personal and can span long periods of time, allowing issues and frustrations to build up over time. Those frustrations can lead to emotional reactions and in some cases comments or action which may be defamatory. Defamation may have occurred where the statements made involve publication of material which contains defamatory imputations about an identifiable individual.

Publication can take many forms, including written statements in letters, e-mail and minutes of meetings, website/social media posts and verbal statements made at meetings. Defamatory imputations generally involve statements undermining a person's reputation, but actual financial loss is not required. Normally, an individual will be involved, but it is possible to defame an organisation with less than 10 employees. Larger organisations may be able to rely on other laws and its people may have been personally defamed and be able to bring their own defamation actions.

There are many potential defences to what might otherwise have been defamatory conduct. In addition to privileges associated with court and mediation proceedings, there are qualified defences associated with distribution of materials in performance of statutory functions and with discussions at meetings.

Recommendations

We make the following suggestions:

- Strata managing agents and executive committee members can and should perform their functions, without being overly concerned about defamation, if they follow the guidelines suggested below.
- Persons making statements about others should be careful what they say. Executive committee members and lot owners particularly need to be careful as they will generally not have the benefit of an indemnity from the owners corporation or coverage by office bearers liability insurance for defamation claims.
- Be careful about accuracy. Consider whether you know the statement to be true or whether it is a reasonable opinion based on reliable information.
- Think twice before making a statement which may be provocative. Consider sleeping on it or bouncing it off someone else before making it. Consider what you are trying to achieve and whether this is the best way to achieve it.

Strata managing agents and executive committee members are sometimes exposed to sustained commercially damaging attacks by lot owners, who refuse to make reasonable efforts to resolve the underlying issues. In these cases, proceedings may be the only practical option and the persons subjected to these attacks should urgently obtain legal advice.

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