

Dealing with Disparaging Online Articles

Strata committee members and strata managing agents of owners corporations are often subject to disparaging commentary published in various online locations, such as news sites, review sites and blogs. This can be more damaging than print articles, which can be expected to have less impact over time, as they remain available online indefinitely, including to persons seeking information about the scheme through search engines.

Frequently, these stem from a dispute concerning the scheme and involve false and usually offensive comments aimed at achieving a favourable outcome in the dispute. They usually achieve the opposite result, escalating the dispute and often making it intractable.

The usual first step, where feasible, is to contact the person who made the statements and try to defuse the underlying tension, with a view to facilitating a sensible discussion aimed at resolving the dispute. Of course, that will not always be possible.

The next step depends on what has been published:

- Where the material has been published on a legitimate news site or review site:
 - The publisher will normally have internal procedures for dealing with complaints and an approach should be made with a view to persuading the publisher to amend or withdraw the material. A publisher will frequently do so of its own volition, if a reasonable case is put to it.
 - Where that is unsuccessful, legal action could be threatened in a letter of demand and possibly pursued, although it can be extremely expensive, will usually be speculative and can do more harm than good. The types of action typically threatened are:
 - Claim alleging misleading and deceptive conduct under Section 18 of the Australian Consumer Law under the Competition and Consumer Act 2010. In some cases, it can be possible to persuade the ACCC to take enforcement action, but usually private proceedings are required.
 - Claim alleging defamation. Difficulties here include injunctive relief not normally being available and the limitation of such proceedings to individuals and companies with less than 10 employees, meaning that the allegation would have to be that the persons defamed are the individual

owners/committee members or agency staff, rather than the owners corporation or agency company.

- Claim alleging the tort of “injurious falsehood”. This is similar in some ways to defamation, but is more difficult to establish, requiring that the statements be untrue, be made with malicious intent and that actual damage have been sustained. However, unlike a defamation claim, it could be brought on behalf of a company and injunctive relief may be available.
- In the case of a blog, one would usually proceed straight to the letter of demand.

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