

ATLANTA

BUILDING NEWS



**2024 GAHBA
INSTALLATION AND
AWARDS PROGRAM**

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**NAHB LEGISLATIVE WINS -
WHAT THIS MEANS FOR HOMEBUILDING**

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1 DUNWOODY PARK S., STE. 200
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CAN I SUE FOR DEFAMATION?

by Tyler Dunn

Each year, I receive a number of calls from builder and developer clients who want to sue homeowners, neighboring property owners or others for slander and/or libel. This article will discuss the law relating to those claims.

Libel and Slander

Defamation is a general term that includes slander and libel. Slander is oral defamation, while libel is written defamation.

“Per Se” and General Defamation

Defamation, whether libel or slander, is also broken down into “defamation per se” and general defamation. Defamation per se includes only statements:

- about the plaintiff in connection with the plaintiff’s trade or profession that are calculated to cause damage;
- that state or suggest the plaintiff committed a crime; or
- charging the plaintiff with having “some contagious disorder or being guilty of some debasing act that may exclude him from society.”

General defamation is a catch-all category that includes any “disparaging words productive of special damage which flows naturally therefrom.” The “trade or profession” type of per se defamation is further discussed below since it’s the most common type of defamation encountered by builders and developers.

General and Special Damages

The distinction between “per se” and general defamation is significant. With the former, damages to the plaintiff are assumed to have occurred and a jury is

entitled to award damages in an amount it deems appropriate without specific proof of amount. With general defamation, damages must be specifically proven. That can often be difficult since specific damages (called “special damages”) do not include general injury to reputation. They include only damages such as lost income and profit. Punitive damages may be recoverable for per se or general defamation if the statement was made with ill will or very little care for its accuracy.

Falsity

To prove defamation, a plaintiff has to demonstrate that the statement was false. If a homeowner complains of “lots of defects” and there are, in fact, “lots of defects,” there’s no defamation claim. Truth is an “absolute defense” to defamation. Minor inaccuracies will not render a substantially accurate statement defamatory, but facts taken out of context or arranged to create a false meaning can be defamatory.

Publication

Defamation only occurs if the allegedly defamatory statement was conveyed to someone other than the plaintiff and that person actually read or heard and understood the statement. The law refers to this as “publication,” whether the statement was oral or written.

Trade or Profession Defamation

As discussed above, “trade or profession” defamation does not require proof of special damages. To fall in that category, the statement must reference or relate to the plaintiff’s trade or profession. It can’t just be about someone who has a trade or profession. A statement that a physician stole land does not defame the physician with reference to his profession, but a statement that a grocery store owner keeps false weights is in reference to their trade.

Generally, a statement about a single instance of alleged poor construction or unprofessional conduct is not enough to constitute trade or profession defamation. The statement must charge a more general defect of character or lack of knowledge, skill or capacity. An untrue statement that a builder’s homes “all have lots of code violations” would probably be defamatory, while an untrue statement that the defendant’s house has lots of code violations may not be defamatory.

Expressions of opinion are generally not enough to establish trade or profession defamation. Georgia law does not, however, provide blanket protection to opinions. If an opinion can reasonably be interpreted as stating or implying defamatory facts, which are capable of being proved false, that statement can be defamatory. 🏠



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