

Should a Body Corporate consider a motion to declare an unknown person 'an absolute scumbag'?

Should a Body Corporate consider a motion:

1. To declare an unknown person 'an absolute scumbag'?
2. To ask a wife if she is proud of her husband?
3. To provide guidance to an unknown individual?

This was one of the more interesting matters we conducted this year.

The motions

An owner submitted 9 motions for consideration at the annual general meeting, in 3 main categories:

1. to have unknown person or persons declared 'absolute scumbags' for interfering with his property. The motions required an unnamed person/s to be declared an absolute scumbag for:
 - leaving a can on his lawn;
 - leaving a rubber snake in his letterbox;
 - leaving unwanted items in his mailbox;
 - and placing large rock in his driveway;
2. to obtain a resolution as follows:
 - 'That the Body Corporate provides guidance to whoever responded to my correspondence by writing to me telling me that I am insignificant. Note: the mere fact that you write to someone telling them that they are insignificant means they are indeed not insignificant'; and
3. to condemn the actions of known persons who allegedly offended him. The following motions were submitted:
 - 'That the Body Corporate condemn the actions of Mr A who placed a hose between his legs as if it was a penis and gyrated his body, toward Mr and Mrs C from Lot 6 as they drove past, as if he was masturbating.'
 - 'That the Body Corporate asks Mrs A whether she is proud of her husband performing above actions and if so, would she appreciate it if other male persons did the same she passed them.'

- 'That the Body Corporate condemn the actions of Mr A who attempted to intimidate Mr B when he drove into the estate on 29th June 2020. Mr A picked up a rock from the pile of rocks outside lots 3 & 4 and actioned as if he was going throw it at Mr B as he drove past.'
- 'That the Body Corporate show concern over the mental well being of Mr A as he is clearly unable to control his emotions and lacks self control. Mock Masturbation and attempts at intimidation are clearly not the actions of a rational individual.'

The Chair's role and decisions

The Regulations compel a Chair to declare a motion out of order if it conflicts with: legislation; the by-laws; or another resolution; or if unlawful; or unenforceable.

The Chair ruled the motions out of order on the basis that they were unlawful and unenforceable. The decision was not challenged at the meeting.

The owner then subsequently sought to over-turn the Chair's decision, arguing that:

1. he should be able to publicly shame the alleged perpetrators; and
2. a motion should not be ruled out of order for simply being unenforceable. The owner queried whether a motion to thank an unknown person for cooking a cake, would also be ruled out of order, and if not, why is it different to his motions.

The Adjudicator

The Adjudicator held that the motions were correctly ruled out of order by the Chairperson. In reaching this conclusion, the Adjudicator relevantly stated:

- 'The purpose of a general meeting is to consider the business of the body corporate, related to its functions. It is not the proper business of a general meeting to engage in point scoring, fuel interpersonal conflict and personal vendettas, or vent an owners opinions or feelings.'
- 'I consider it inappropriate of the applicant to be wasting the time of the body corporate by submitting unseemly and childish motions that do not propose any substantive action and are completely unrelated to the proper business or functions of the body corporate.'

A costs order was made against the owner. Not surprisingly, this was not the owner's first application that had been dismissed.

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