

Publication Date: September 5, 2017
YSP Podcast Transcript: Episode 077. In Conversation: a strata manager acting on the instruction of a single committee member

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Intro: Welcome to Your Strata Property. The podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source. To access previous episodes and useful strata tips, go to www.yourstrataproperty.com.au.

Amanda Farmer: Hello and welcome. I'm Amanda Farmer and I have with me today Reena Van Aalst. Hi, Reena.

Reena Van Aalst: Hi Amanda. How are you?

Amanda Farmer: I'm doing really, really well. I have just recently returned from my overseas jaunt, my European extravaganza and I'm happy to be home.

Reena Van Aalst: Oh that's fabulous. You look very relaxed, so hopefully, that will last.

Amanda Farmer: Thank you. Yes, that's right. We can see each other here over Skype video. It's not just a podcast. It's a video. If you're a member of the YSP online community you actually have access to these videos. You can both watch and listen and see Reena and I. But yes, it's lovely to have a little break and to come back revived and relaxed back to strata land and ready for the next big thing, so I'm happy to be here.

Now as we do let's chat about our winds and our challenges. What's been your challenge recently Reena?

Reena Van Aalst: The challenge that I've had actually has been indirectly through a lot owner who lives in another scheme who's asked me to assist him, but it relates to something I think you mentioned before in your podcast, Amanda, about dealing with criminals who live in your strata scheme and actually usually are renting the apartment in the scheme, it's usually a high-end scheme because people are usually dealing in drugs and other illicit substances, and so, therefore, they're able to afford higher rent. The other thing also is that it's usually in apartments where there's actually high security that's usually concierge or a full-time security so that people can't get to them very quickly if there was an incident because, obviously, I think people do know who people are in that world.

And I was just wondering how, perhaps, your experience has been in assisting lot owners who have to deal with highly aggressive people who can be quite intimidating and threatening. In this particular case, originally the lot owner wrote to the committee and they then were aware of the matter and then they approached the lot owner. But of course, lot owners getting above market rent, so even though this is a prestigious scheme the rent that is being received is even higher than the market value, so the buyer's reluctant to do anything about it. It's a bit of a challenge I think now with drugs and things and you can see the whole Commonwealth Bank money laundering scandal that's just visited us recently. So I was just wondering, in terms of your experience, how best to deal with that sort of challenge from an employer's perspective.

Amanda Farmer: Yes, absolutely. It's something that I have certainly helped schemes with in the past, committees, strata managers struggling to deal with these personalities, let's say, and you're right, I have spoken about it on the podcast before, way, way back in episode three. I gave everybody six tips for dealing with criminals in strata properties, so if you haven't heard that one, head over to yourstrataproperty.com.au/podcasts. Scroll down to episode three and have a listen. But, basically, my experience dealing with, as we say, criminals in strata has been this: I'm generally approached by a strata manager who is dealing with a committee who is just at their wit's end. They have somebody in the building, as you say, Reena, it is usually a tenant, and they're engaging in some pretty serious anti-social, at the minor end and illegal at the serious end, behaviour.

And, as you say, that's drug dealing, it's property damage, it can be theft, a case I was involved in-



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Reena Van Aalst: Prostitution?

Amanda Farmer: Yes, definitely prostitution. A case I was involved in had the mirrors in their lift smashed consistently, so they'd be replaced and they'd be smashed again, security cameras removed or smashed/damaged. And people being harassed and intimidated on the property, building managers being harassed, committee members, chair people, strata managers, unfortunately, going to meeting on site often at night in a place where there might not be great light in the parking area, for example, and they've got to make their way into the building and being approached by these people and being threatened. And that is when ... and they say look, this is the last straw, we're going to lose our strata manager, we need to do something about this.

So the first tip that I always give is ... seems an obvious one but often doesn't happen, involve the police. You absolutely must involve the police in these situations.

Reena Van Aalst: Amanda, can I ask ... sorry to interrupt you, but I mean sometimes when I've had to deal with the police I just find that they're not very responsive, in terms of taking these types of threats seriously. Unless someone's been injured or assaulted, I haven't really had much success when I've dealt with police on other similar types of behavioural issues.

Amanda Farmer: You're right and that is unfortunate and it has been my experience as well but where we find that we tend to get some traction with the police is, sadly, after numerous complaints, which means you've got to start somewhere and where you get third parties involve such as lawyers and you have somebody like a lawyer who has put together a brief for the police and it's a brief of evidence that contains CCTV footage, it contains statements from people who have been affected by this behavior. And you're basically doing the hard work or the leg work for the police and saying hey, this is what's been happening in this property, here's all the evidence that we have gathered, we now want you to do something about it and that may mean an apprehended violence order ... and I want to be clear that that's something that only an individual, a lot owner, for example, can apply for. The building, the owner's corporation cannot apply for it. A strata manager, in their own right, as an individual, can apply for that if they've felt harassed, threatened or intimidated but I'm often asked can the owner's corporation apply for the AVO, no, unfortunately, that doesn't exist.

But you're right, Reena, it can be frustrating dealing with the police but I always say that's not a reason not to do it. You must have that on the record that you've taken that step. The next thing that I remind people, I guess, is don't forget to go through all your usual enforcement procedures, which means if these people are breaching the by-laws, issue a notice to comply, a by-law breach notice. This is often overlooked because people are feeling intimidated, they're feeling threatened, and they think oh, I don't want to send them a letter, they'll just rip it up, they won't read it. This kind of thing is not going to work for them. And the fact is that may well be the case, but once again, it's in the same boat as notifying the police. You have to go through that process so that you can get to the next stage and the next stage is, after you issue a by-law breach notice, you can look to apply financial penalties.

So we eventually get to the stage where there's some money on the line and that's where, in my experience, we start to see some movement. If a by-law breach notice is ignored, then you can go to the tribunal and get an order that there be a monetary penalty and that's when you start getting the attention, if not of the tenant, then of the owner of the lot because that penalty can be applied to them as well. In your situation, Reena, where you're saying look, the lot owner just doesn't want to do anything, they're getting good rent, well when they start looking at penalties of up to 5000 dollars for damaged property and breaches of by-laws, well, as a landlord, as an investor, then you might start to see a change in that attitude. But you've got to start with that basic enforcement procedure of issuing the notice to comply, issuing letters, bringing the bad behavior to the attention of, not only the resident, but of others in the community as well otherwise they don't know that these things are going on and they can't band together with you to assist you and give you that army, if you like, to stand up to this person.

And that leads me into my third tip, which is to publicize the bad behaviour. I firmly believe that publicity is a criminal's worst nightmare. Criminals are bullies and bullies thrive on fear and that's other people's fear. So where people are silent and they're afraid and they won't approach people like lawyers, like their strata manager, like the police, that's when the bully is winning. So publicising the bad behaviour in the minutes of meetings, by issuing these notices, by telling the community hey, we will stand together against this and do everything that we can, that's a step in the right direction.



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Reena Van Aalst: I think also sometimes there's a reluctance on the part of owner's corporations and committees to actually publicise it through minutes because some people are worried about the adversity it may have upon the values of the apartments and people thinking that this scheme is inhabited by criminal type elements. So I think, sometimes, there's a dual problem there for people where they're conflicted by the need to do something and address the problem and also by the fact that if it's publicised, Amanda, they're worried about the reputation of their scheme.

Amanda Farmer: Yes, for sure. And, look, what I say to that is you can't have it both ways. You can't have your peaceful community living in harmony without these personalities and ignore the bad behaviour, it's not going to go away-

Reena Van Aalst: Yes, yes. You can't have your cake and eat it, too.

Amanda Farmer: Yes, exactly. It might have nice clean books and it looks like everything's fine but look ... there's no way around that in my view. My fourth tip is to increase security. So, again, it sounds like an obvious step, get some CCTV in there. A lot of buildings forget to do that or don't do it until it's too late. Get some professional, highly qualified, high-level security guards and there are companies out there who provide more than just your standard open door, close door stand at the boom gate service. There are companies out there that hire ex-police, ex-military, these guys are tough, they know who they're dealing with and they're hired on a short term basis and they're there to deal with a particular problem or a particular person for a short period of time and it's all about sending that message that we will not stand for this behavior and we are going to invest the time, the money to deal with it.

The 5th tip that I give is to get help. You don't have to deal with this alone, talk to your strata manager, get the advice of a lawyer, talk to your neighbours, have a subcommittee put together, there is power in numbers. And linked to that, my final tip is engaged your fellow residents and standing up to a bully is absolutely, I know, a scary thing to do. Especially when they're a known criminal and they're known to police but there is safety and there is success in numbers. So that is my flying visit to my six tips but please go and check out episode number three for some more detail there. And hopefully, Reena, that helps you and your committee.

Reena Van Aalst: I'll pass it on to the lot owner who has asked me to assist him and, yes, hopefully, we can start the process based on at least bringing it to the attention of the police if it hasn't already been done so and using the regular by-law enforcement procedures.

Amanda Farmer: Yes. And I always say to committees who approach me with this problem, be prepared for it to get worse before it gets better because once you start standing up to these people and you start doing things which you may not have done before, which is involving the police, which is issuing notices, having lawyers involved, you will get some push back. And I always say that's when you know you're on the right track. It's hard I know, you're living there and I'm not and it is difficult to face that every day but in my experience with similar buildings it takes a while but these steps do get you to where you need to be in terms of having a secure, safe, happy community.

Reena Van Aalst: Yes, I think one thing that perhaps you didn't mention is that if you're having any strata committee meetings, not to be held on site but to held perhaps in a room where there's a security guard or cameras or somewhere outside the building so that it probably makes it a bit harder for them to come to the meeting if they were so inclined to do so because now tenants can come to meetings, depending on the composition of actual percentage on the strata role.

Amanda Farmer: Yes, absolutely. And that's something that I have seen other buildings do really successfully. Whole meetings in different places that are not on site, I've held a number of meetings in my own office and we have a security building where I am, we do have cameras and it's just changing the scenery can go a long way-

Reena Van Aalst: Yes, can make a difference.

Amanda Farmer: To changing behaviour. Yes, absolutely. Good tip.

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Reena Van Aalst: Thank you for that, Amanda. Thank you.

Amanda Farmer: No worries. Okay, well, my challenge for this week, Reena, I have lot owner clients who are particularly frustrated with their strata manager at the moment because they feel that the strata manager is spending the owner's corporation funds after only getting the instructions of a single committee member so, rather than receiving an instruction from the committee arising out of a committee meeting, for example, to have some gardening done, the strata manager gets an email from the chairperson who has been the chairperson for many, many years. The chairperson says hey, I think we need to get some gardening done and the strata manager goes ahead and engages the gardener and the invoice comes and pays the bill and my client, who is a secretary on the committee, says where did this come from? I didn't know this was happening, these are owner's corporation funds and they are asking me where's the line here? Where's the authority of the strata manager to act on the instruction of a single committee member?

And the other fly in the ointment here is that these are amounts that are being spent that aren't even in the budget. There are things that are cropping up and the strata manager, as I said, is acting on instructions on one committee member and spending money that the owner's corporation, at its general meeting, didn't even take into account might be spent throughout the year. So, I'm not sure if you've seen this in your practice, Reena?

Reena Van Aalst: Yes, I've actually seen that happen more often than not because I think, unfortunately, more often than not, because I think unfortunately the strata manager sometimes more often than not feels like the meat in the sandwich, in terms of trying to manage the needs of particular types of personalities. And I think there's a misconception by managers and lot owners, even, and other committee members that the chairperson has a greater authority than any other committee member, and I think that comes from the fact that in a company structure that would be the case, sometimes in companies a chairperson sometimes has a casting vote, whereas in a strata scheme the roles and responsibilities are clearly defined and that usually is just to chair a meeting. And rule motions out of order if they are and obviously rule the results of any motions put forward at meetings.

And I think in terms of strata managers, sometimes you don't get any answers from ... let's say, in this case, obviously this is not the case but sometimes the chairperson may be the only person that really communicates with the manager and ... but the way that I've always known it is to email all the committee members and make sure that everyone is aware of what's happening and make sure that the majority have provided instructions and then that can ... if it can't wait until the next meeting then that is then ratified at the next meeting. Another thing I've noticed now that I'm managing some smaller buildings compared to the larger ones that I have managed and do manage now is that smaller buildings don't get to meet very often and have formal meetings. A lot of things are done outside of meetings and I think that's where it ... is a bit of a tendency not to follow the rules and I think that if you're at a meeting and you put a motion, you wouldn't let just one person make the decision.

Yet, when it's general day to day things or things that aren't even day to day, like you were saying, Amanda, unbudgeted, there seems to be a very different way of accepting instructions and undertaking work. So, I think you'll find it happens more often than not and I remember I was doing a joint presentation for SCA owners last year for the New Acton and one of the greatest complaints that they received at fair trading is schemes making decisions about having formal meetings.

Amanda Farmer: Yes.

Reena Van Aalst: That people just go off and do stuff and it's never minuted, no one knows what's happening and therefore the owners find out that the AGM, like you, were saying, that they've spent money that hasn't been budgeted for.

Amanda Farmer: Yes, and I think strata managers are putting themselves in a really sticky situation there if they are taking instructions from a single committee member without there having been a meeting or at least some consensus amongst the majority of committee members, you're really putting yourself at risk there but, having said that, I have had the experience where I've seen some strata managers have been delegated some authority to approve the expenditure of up to a certain amount. Now, I don't know if you do this, Reena or you have seen this done before-



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Reena Van Aalst: No.

Amanda Farmer: But where the strata manager has been authorized that if it's not going to cost more than, for example, 500 dollars then the strata manager can simply arrange for it to be done and whether that's something like a lock on the door or a plumber having a quick visit and fixing something on the common property, then it doesn't need to go through the committee. Now, this is closely linked to the building that I'm dealing with and the disgruntled lot owners, they did have that kind of a rule but it was a very high sum, in my opinion, that it was 5000 dollars the strata manager could spend ... could authorize expenditure of up to 5000 dollars and when I saw that I said absolutely no way, that is far too high. For a building ... this is not a particularly large building and you could see how that was being abused, maybe not intentionally but it was a little bit too much leeway I think for the strata manager to have and put them in a difficult position where they were making decisions that they were really shouldn't have been making without reverting back to the committee.

Reena Van Aalst: Yes, it sounds like, I think in the case that you're advising about, Amanda, that sometimes this could have been the decision of the chairperson so that he could have his stuff done ... or she, could've had their stuff done because I've never seen a managing agent being provided a limit of that amount in any building that I've either overseen being managed or managed myself. It's just a high amount of money to allow a strata manager to allow a delegated authority. I mean, most managing agents, like you said, Amanda, may be given authority to spend up to a certain amount for minor repairs and that may work for some buildings. The way that I like to work is not to even have any amount really, just to basically pay any utilities and regular maintenance contracts if they fall within the specific contractual amounts, but other than that.

Because sometimes a small thing ... like a small little repair may end up costing a lot more than what originally had been quoted and then after you've got to explain why it's gone over that 500 if that was the limit and I just find it's really ... why put yourself in that position? You know. It's not, you know ... the owner's corporations, it's their building, they should manage it the way that they see fit and they should make the decisions.

Amanda Farmer: Yes, absolutely. And with the wonders of technology these days and having meetings in writing rather than in person, the ability to do that, electronic meetings now, it's pretty easy to get the instructions that you need.

Reena Van Aalst: Yes, exactly.

Amanda Farmer: Alright. So, what's been going well for you, Reena? What's your win you'd like to share?

Reena Van Aalst: Well, actually, this is actually quite a very complicated one, Amanda, that had arisen, were a lot owner had approached me and they'd just bought into this new apartment block and they wanted to renovate the apartment and install floorboards. They actually gave me a copy of their by-laws and originally the by-laws had said that there was a floor coverings by-law, an old one saying that a lot owner must ensure that the floor space within the lot's covered to an extent not to cause any disturbance and that wouldn't apply to any floor space comprising a kitchen, laundry, lavatory, or bathroom. Then a few years later it was amended again, so that was number 17A and B. Then C and D were added to say that lot owner occupier must notify the owner's corporation at least 21 days before changing any floor coverings of the lot if it was going to cause any increase in noise and they must specify the type of proposed flooring.

And, again, it doesn't affect any requirement under any by-law to obtain consent for approval for authorizing or for changing the floor coverings. Then a few years later again, then they added two more clauses, 17E and F saying, despite anything else in the by-laws of the strata scheme the floor covering of a lot in the strata scheme must not be wooden floors of any description. So during this period of, I think, about six years, people have put in floorboards, the owner had obviously, at the time, Googled other properties that were in that particular scheme showing ... for sale, showing ... or for rent, they did have floorboards. Now, this particular person has been told that they can't ... and pretty much the strata managers, again, listening to the voice of one person ... I mean the chairperson, not even ... and the chairperson has said that they won't even allow them to put a motion on a general meeting and yes, so that's how far they are going to even submit.



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Amanda Farmer: Yes, okay.

Reena Van Aalst: Yes, so that's how far they're going.

Amanda Farmer:

Reena Van Aalst: And basically I had written quite a lengthy letter and pretty much told them I'm a strata manager, knowing that it was obviously going through the chairman because every time she'd respond she'd say that the chairman was saying this and the chairman was saying that, but pretty much, like what you were saying, that one person can't make the decisions and now she's finally agreed to allow the proposal to go onto the general meeting agenda I think under section, I think it's 110 now, Amanda, were minor renovations-

Amanda Farmer: Yes.

Reena Van Aalst: And that does include floor-

Amanda Farmer: Yes, hard floorings.

Reena Van Aalst: Yes.

Amanda Farmer: Only need to be approved by ordinary resolution at a general meeting. And was that an extraordinary general meeting? Did the motion need to be requisitioned by making a qualified request?

Reena Van Aalst: Yes, so basically we asked the secretary to convene the meeting on behalf of the lot owner and-

Amanda Farmer: Okay, and they did.

Reena Van Aalst: Yes.

Amanda Farmer: Yes, that's good.

Reena Van Aalst: But I mean they had even refused to do that, which ... and if the owners paying for it, it's not as if there's any cost to the owner's corporation and it's just ... and I'm not sure if that by-law really is a valid one when it has so many contradictory clauses.

Amanda Farmer: Yes, that's what I want to go back to, that the source of this problem sounds to me like a mish mash of a by-law and, from what you were relaying there, Reena, it sounds like they've had the model by-law about flooring and they've added these clauses rather than repealing and replacing with a fresh by-law, they've just tacked on and the effect of that sounds like it's produced a very confusing by-law that is possibly invalid on its face-

Reena Van Aalst: Yes, that's what I think, Amanda, because of the fact that the first two clauses actually contradict the last two clauses and you can see when people don't engage lawyers or they just try and do it themselves what sort of trouble they get into.

Amanda Farmer: Yes.

Reena Van Aalst: A lot of people sometimes think that oh, it's only flooring, it's not a big deal and you don't need to get a lawyer involved for that or get a property drafted by-law. But the problem is when people are spending over a million dollars in an apartment and they've done searched and they can see that there's been flooring applications approved in meetings in the past and now there's been a change in part of the by-law, as I said, which contradicts the former clauses of the by-law, and now they're not allowing them to even submit a motion. But the win is, thank God, now they've actually agreed to-

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Amanda Farmer: Yes, and a shame that this lot owner had to go to the extent of getting your advice, Reena, and no doubt going to that expense.

Reena Van Aalst: Yes.

Amanda Farmer: It's simply to exercise their right to have their application considered at a meeting. And, of course, it's for the owner's corporation then to look at that application and decided whether or not they're going to permit the hard flooring, which is now considered minor works under the new act. And that owner's corporation would be well advised to, as part of their by-law review, which perhaps they might be doing for the 30th of November, to have a look at that flooring by-law and if hard flooring is a problem in that building, then to regulate that properly and not in this mish mash of approach.

Reena Van Aalst: Yes. I think also, Amanda, I could see that there was a bit of denial in natural justice. The person wasn't even allowed to have a voice in any sense and, again, this whole notion where there's a chairperson who thinks that they can run the whole building, like you were saying in your former example of someone taking instructions of one person, it seems to be the case again where we don't believe that the committee actually has been consulted, rather just the chairperson has been consulted in relation to this particular issue.

Amanda Farmer: Yes. Another trap there for our Strata managers to be aware of, for owners to understand what their rights are and for committees as well to understand that owners have these rights and to make sure, as you say, Reena, everyone's afforded that natural justice and procedural fairness, as we say.

Reena Van Aalst: Yes.

Amanda Farmer: Alright, well, we might just wrap up there. I've got something nice to add, maybe not necessarily a win but I wanted to draw everyone's attention to the fact that the city of Sydney Council's smart, green apartments program is running once again. And this is a free program that city of Sydney council provides. They choose 20 buildings each year to work with to reduce costs, energy costs in particular, for buildings, increase their energy efficiency, reduce their water usage and improve their waste management. They give some really great examples on their website of buildings, including a building that I think you were involved with, Reena.

Reena Van Aalst: Yes, the [Bow 00:25:15] House.

Amanda Farmer: Yes, and Gordon Strait whose been on the podcast before was involved in that as well. Applications are open until the 15th of September. So by the time, this goes to air I think you'll have a short amount of time to get your applications in if you want to be selected as a building to be part of that Smart Green Apartments program for the city of Sydney. And I will include a link to the details for that in the show notes for this episode. Alright, I think that is it from me this week, Reena. Anything else?

Reena Van Aalst: No, all good, Amanda. Thank you for having me.

Amanda Farmer: Fabulous. Lovely to be back, lovely to be chatting with you again. I shall see you next time.

Reena Van Aalst: Yes, great to have you back, Amanda.

Amanda Farmer: See you.

Reena Van Aalst: Bye.

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