

Publication Date: May 16, 2017
**YSP Podcast Transcript: Episode 061. A summary of the changes
to meeting procedure under the new NSW strata law**

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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 this is Your Strata Property. Today I am taking you to Sydney's beautiful Walsh Bay. A little while ago I was invited to have a chat to the lovely owners down at Walsh Bay and give them a run down on the essential parts of the New South Wales Strata Law. And what I've got prepared for you today is a short segment from that presentation dealing specifically with meeting procedure.

So I'm covering off electronic voting, when we should be holding our annual general meetings now, the new quorum rule, email notices and limits on proxies. So if you're looking for a refresher or even an introduction into the key elements of this new law when it comes to holding your meeting, then listen in. I've done the hard work for you, thanks to the lovely owners down at Walsh Bay. Now, the detail of this presentation is as always in a paper that I have prepared for you and you can access your copy of that paper by going to yourstrataproperty.com.au/newstratalaw. Head over there and you will have a copy of that very detailed paper, sent straight through to your inbox. Feel free to share with your committees, your strata manager, all the stuff you need to know about the new law here in New South Wales.

Enjoy this part of my presentation to owners on Strata meeting procedure.

"The new legislation is allowing us to enter to the modern world when it comes to our meetings. We can hold our meetings electronically, over the internet, by video link, by teleconference, and the reason we can do that is because we're now allowed to vote electronically; and there're a number of software companies, and they have been very excited for a long time about this on the horizon, and they have built software specific to strata buildings that allows them to legally vote electronically at their strata meetings.

Now you can do this for general meetings and strata committee meetings, but what you have to do is have a resolution, a resolution that permits electronic voting. So, I get asked this question a lot by builders and how do we get this started. Well, you are going to have to have a meeting, an old fashioned meeting, let's call it, first to decide to do this and resolve to do this. The legislation requires you to have a resolution to permit electronic voting. If you're permitting electronic voting for your general meeting, you resolve in general meeting to do that. If you are permitting electronic voting for your strata committee meetings, you're resolving as a strata committee to do that, that's express in the legislation.

Now, I think this is really going to come down to where your strata manager is at in all of this and whether they are prepared to and able to facilitate these kinds of meetings, because they're the ones who are going to be using the software, controlling how the software works and potentially making that investment in the software so that all of their buildings can use this functionality and they're certainly strata managers out there who are being pitched out to by the software providers to say, "Hey guys, you should get into this, because you'll be able to offer that, and this is a value add to your building". So if you're thinking about that, the first person to talk to is probably so aligned with you, on the spot, he's probably lying there to see you if there's something we can do and how do we get started".

My suggestion has been that you resolve at each annual general meeting, that you're going to permit electronic voting for the next 12 months, and you just have that as a standard motion. Same for your strata committee meetings, when you have your first, you elect a new strata committee at each A.G.M. so when you have your first strata committee meeting, resolve that "we are going to permit electronic voting for the next 12 months".

Okay, timing of the A.G.M., the old laws said that you must have your annual general meetings sometime between one month before, and one month after the anniversary of your first A.G.M. So you have this two month window where you had to have your A.G.M., and if you had it outside of that window, it was potentially invalid. Now this caused a lot of problems not only for builders



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who had trouble getting quorums if their anniversary of their first A.G.M. happened to be in December, strata managers very frustrated because they happen to manage buildings where they all had to have their A.G.Ms in January or February, and you were really constrained by the legislation.

The new law says that you can have you A.G.M. at any time as long as you have one in each financial year of the building. You must have one A.G.M. in each financial year of the building. Now I say financial year, I don't necessarily mean one July to 30 June. Every building has a different financial year, and it depends on when the strata plan was registered and when you had your first A.G.M. Lauren will know what your financial year is and as long as you have one A.G.M. in each financial year, you're going to be meeting the requirements of the legislation so, good move I think.

The quorum rule has changed. We quickly touched on it in the beginning. Does anybody know what the quorum rule used to be under the old law? If you didn't achieve a quorum, you had to adjourn the meeting and hold the adjourned meeting sometime not less than seven days, have a second meeting basically. You're forced to have a second meeting if you didn't have a quorum. Many, many buildings consistently don't get quorums and consistently having to hold two meetings, very frustrating. What's changed under the new law, it is now up to the chairperson to decide whether or not the meeting is adjourned or the meeting proceeds, even if there's no quorum, even if just the chairperson turns up. The chairperson can say, "I'm gonna go ahead. I have decided as chairperson that I'm gonna go ahead", or they can adjourn, it's their choice. The question I, of course, get asked is, "Amanda well, what's best practice? I'm a chair, I wanna do what's right for the building, what should I be doing?" and my answer has been, "It depends on what's on the agenda".

Yes legally, you can go ahead if you're the only one in the room but if the only thing on the agenda is a motion to approve your common property rights by law, I probably would be adjourning, because you should be acting in good faith. You should be acting, or seem to be acting in good faith. If we've got special levies on, if we've got a line agreement to be approved, if we've got something that's gonna have a significant financial impact on many, many owners, I would be suggesting that best practice is to adjourn and have a meeting in a further seven days time or more. Not less than seven days is the adjournment period.

As lawyers, we always think, "Okay, where can this go wrong. And if I was a lot owner who for some reason didn't get the notices, although there was some issue as to why I didn't turn up, and then I was then settled with a huge special levy, or an obligation to contribute to a loan, I'd be looking for every way I could to say that that meeting was invalid. And I might be saying, "As this lot owner's lawyer, well I appreciate that the chair under this legislation has the ability to continue with the meeting, but this was such a serious motion, and this chair has obligations as a committee member to act with good faith. This is exactly the kind of situation where they should have adjourned, and they haven't". And I say, "That's bad faith", and I say, "That for that reason, the meeting should be invalidated. It shouldn't have gone ahead on that chair's say so".

The other thing that's happening when it comes to meetings and notices is that the legislation now makes very clear that you can email your notices of meeting. There was a weird thing in the old Act that said, you can only email notices if you have a bylaw saying that you can email notices. There's some debate amongst the lawyers as to whether that meant anything or not because there's the Electronic Transactions Act that says that if you can mail it, you can post it, it's all the same thing. But just to clear that up, the Act is now express that, saying you can email notices of meeting even if you don't have the bylaw saying it.

And the limit on proxies, so Mary's asking about this earlier. This new part of the law and you've probably read about this in the media, it got a bit of hype. To prevent what we call proxy harvesting, that dirty, dirty act of proxy harvesting, in schemes that have 20 lots or less, one owner can only hold one proxy. In schemes that have more than 20 lots, one owner can hold the equivalent of 5% of the number of lots in proxies. Hundred lot building, one owner can hold five proxies. Okay, so you guys are in the more than 20 lots category, so one owner can hold 5% of the total number of lots.

Okay, really, really important, and it's a really practical thing that many chairs and strata managers who have often directed proxies are grappling with because in large strata schemes you get your proxies in 24 hours before, so you might get them with enough time to get back to people and say, "Hey, I've already been given too many, I've gotta give this back to you, and you've gotta give it to someone else". But you know, Lauren will be out to say, "But her experience is deign", but I have seen quite a few people

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disenfranchised because of this rule, because they are turning up to meetings and saying, "I don't own all of these proxies", and the chair is saying well, these four have to be invalid because you've only got one. How do you choose that one? Or, strata managers not getting the proxies in within that 24-hour window and then, they're looking at them and saying, "I've got too many so, there are some invalid proxies here".

So if something's that's really important, to get the message out onto owners to be aware of this, to be communicating with the person to whom you're going to give your proxy, to make sure you know how many they already have, and if they can take on any more.

Okay, let's quickly get into the explanatory notes for motions. This is important for you as lot owners. If you're asking for a motion to be placed on the agenda of a general meeting, you're going to write to Lauren and you're going to say, "Can you please put this motion on the agenda. I'm proposing a bylaw because I wanna do some work and it's going to add to, alter, erect new structures on the common property". You must also provide with your motion, an explanatory note. This is new, you didn't previously have to do this. And I've just given you there an example of what an explanatory note might look like for a motion that's proposing a bylaw. Now, this is in the paper, the explanatory notes must not be more than 300 words. So, it's a small note, and basically just saying, "the owner of block whatever is proposing this motion and if it's passed, then this is what it's going to achieve". Community associations, as opposed to strata schemes, have been doing this for a long time, as part of their legislation and it's something that's been introduced only for motions that are proposed by lot owners. So not your usual, approving the minutes, electing the executive committee, appointing an auditor, all your usual statutory motions that your owner's corporation or your strata committee proposes and prepares the agenda. They don't need explanatory notes, but a motion proposed by a lot owner does need an explanatory note."

And that's it from me on strata meeting procedure, at least for now. Hope you enjoyed it, good refresher there for you, and remember to head on over and grab your copy of the detailed paper, which covers not only meeting procedure but other important aspects of the new legislation, specific to strata owners. And that is at yourstrataproperty.com.au/newstratalaw

Catch you next time.

Outro: Thank you for listening to Your Strata Property, the podcast, which consistently delivers to property owners, reliable and accurate information about their strata property. You can access all the information below this episode via the show notes at www.yourstrataproperty.com.au. You can also ask questions in the comments section, which Amanda will answer in her upcoming episodes. How can Amanda help you today.

