

Publication Date: December 19, 2017
YSP Podcast Transcript: Episode 092. In Conversation: co-owners as strata
committee members and collective sale bullying

Listen to this podcast episode here: <https://www.yourstrataproperty.com.au/in-conversation-co-owners-as-strata-committee-members-and-collective-sale-bullying>

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 the lovely Reena Van Aalst. Hi, Reena.

Reena Van Aalst: Hi Amanda. How are you?

Amanda Farmer: I'm doing well. I want to say Merry Christmas. I think we're just about there.

Reena Van Aalst: Yes. God, it's been a long year. Can't wait for it to be over, to be honest.

Amanda Farmer: I was listening to one of our episodes, it was probably about a month or so ago now, and I think you were saying, "*This year has been especially long,*" and I said, "*Reena, I think we say that every year.*" I think it's at this time of the year that we look back and we feel it. But, we got there and it's Christmas party season. It's summer and Santa's nearly here.

Are you taking some time off? You going away anywhere exciting?

Reena Van Aalst: Not going away. I'm closing the office for a few weeks. I might do a little trip maybe in that period. We're going away next year on a big trip.

Amanda Farmer: Oh exciting.

Reena Van Aalst: I need to plan that in my time off. Sometimes you actually need time off to actually plan a holiday, Amanda.

Amanda Farmer: Yes. Yes. Yes. It's so true. I always find this is a good time of year for planning, and similar to you, my office closes as well. And the courts are closed. And it's all a bit quieter. I do always try to take that early January period to do a bit of planning for the year. Look at what my goals for business might be. Personal, what I want to achieve. Try and map those out as best I can. That's certainly the intention if I can get 10% of the way there, then that's better than nothing.

Reena Van Aalst: Yes. We always have good intentions about the time period that you have off. You think, oh I'll do this, and I'll do that but sometimes you tend to do a lot more socialising.

Amanda Farmer: That's true.

Reena Van Aalst: So it goes all very quickly.

Amanda Farmer: Socialising. Sleeping. All that kind of stuff.

Reena Van Aalst: Exactly.

Amanda Farmer: All right. What's been your challenge for this week Reena?

Reena Van Aalst: This is an interesting one. It's a compulsory management that I'm looking after. It's a 3-lot scheme with two owners, with two lots being owned by the same owner. This owner owes a substantial amount of levies. So, obviously action needs to be taken, but when I took carriage of the scheme earlier this year the legal fees, which are also substantial had not been paid to the lawyer. Because there were insufficient funds to pay the lawyer for their legal fees.

Publication Date: December 19, 2017

YSP Podcast Transcript: Episode 092. In Conversation: co-owners as strata committee members and collective sale bullying

Basically, we're sort of at the federal court level now with this matter. The lawyer has said to me, "Reena I can't act anymore until I'm paid my legal fees." And, I said, "Okay. Well, let me know how much you need in order for us to recover the levies and to pay your legal fees." So he actually provided me with three different cost agreements for each cost order. Two were in the federal court, and one is in the local court. I'm now going to raise a special levy in order for the costs assessment to be done, as well as raising money for the legal fees. But, I've never really come across this before, Amanda in terms of having this occur.

I think part of the problem is because the owner has disputed how the levies have been allocated. I think we've had this discussion probably before. Not even on our podcast but when we were working together on a case. A lot of the software actually, when levies are received it will actually allocate the levies against the oldest debt first. So, that would include legal fees that have been put on the lot account for recovery of levy contributions etc.

Although what I've learnt that was one particular software that does that. The other software that I'm using now is set up automatically to do that, but you can actually override it, and tell it that when levies come in I want it to go to the admin fund first, capital fund second, interest third, and then other costs. I think this is another case where the legal costs have all been put on the lot account as well, Amanda, which I think you and I have discussed and been involved in a case where we found out you really can't do that.

Amanda Farmer: So, I'm a bit confused. What is it that this lawyer is now seeking to do? Do they want to be paid and you're getting their costs assessed?

Reena Van Aalst: Because there's been a dispute about their costs, the owner has disputed their costs we don't want to go to the court and have a fight about costs. So, what the cost agreement is, is an application for a costs assessment, and two in the federal court and one is in the local court.

Amanda Farmer: Got it.

Reena Van Aalst: So, there are obviously various judgements. This is so complication and I've just never really come across this before. I've come across cost assessments, but not where the owner's corporation has had to basically agreed to that. I think in this case because of the contentious nature of the lot owner versus the owner's corporation, and the lawyers, and what's transpired in the past, I think that this is being taken as an approach so that the owner's corporation can recover it's levies. But, after the costs assessments have been done, so it probably reduces the fight in court about the cost, which I think have been disputed in the past.

Amanda Farmer: Yes. Sure. It would do that if you had a costs assessment at a figure that's determined by a cost assessor as to what is a fair and reasonable amount of cost. That process is done through application to the supreme court where a solicitor is appointed. Somebody who is a cost specialist, and they go through the lawyer's bills and they come up with a figure as to what they say is a fair and reasonable amount. And it might be the same as what the lawyer has actually billed, or it might be less than what the lawyer's actually billed.

So in the meantime, while this is happening the federal courts' proceedings to recover the unpaid levies, are they on hold?

Reena Van Aalst: Yes. They're expiring. I think we've got one year or something, Amanda. But, the initial amount is to raise the levies to pay for the costs assessment. That's the first part. So that's what we're doing now. We're not raising all the levies for the legal fees. We're raising the levy to do the cost assessment.

Amanda Farmer: Okay. I wouldn't imagine that, that was too expensive. I mean there's an application fee, and then there's the-

Reena Van Aalst: If you look at how much is outstanding in terms of legal fees to the lawyer, and levies owed to the owner's corporation we're talking about a substantialism amount of money. Where that assessment amount is really insignificant compared to the amounts we're talking about.



Publication Date: December 19, 2017
**YSP Podcast Transcript: Episode 092. In Conversation: co-owners as strata
committee members and collective sale bullying**

Amanda Farmer: Okay. That does sound challenging.

Reena Van Aalst: Yes. It's a cashflow issue because we don't have enough funds in the owner's corporations accounts to pay bills apart from the just the maintenance things, and insurance.

Amanda Farmer: Sure.

Reena Van Aalst: And, it also means that the owner is also disadvantaged by the fact that all our energy is being expended in trying to recover levies, and there's a fight about legal costs.

Amanda Farmer: Yes of course. And, where you've got this three lot scheme it's the owner who owns two lots who's not paying the levies, you can't easily solve this problem by raising a special levy, and having everyone contribute and pitch in for the time being. Yes. Unique situation.

Reena Van Aalst: Yes. The current levies are being paid. Just the disputed ones. That were determined at the last AGM, but it's all the other disputed, which is quite substantial.

Amanda Farmer: Well let us know how that all pans out. That is definitely an area where a strata management and strata law as well can get quite complex, and interesting. We always like to hear about those ones.

Reena Van Aalst: Yes.

Amanda Farmer: I had a question this week, Reena from a strata manager, both a client and a friend of mine. This strata manager reached out to me with a really good question. She asked me whether co-owners could be acting committee members. And, there is provision in the legislation here in New South Wales, that an acting committee member can be appointed. An acting committee member must be somebody who is otherwise eligible to be a member of the strata committee. Now the relevant sections of the Act are Section 31, which sets out the people who are eligible to be appointed or elected to the strata committee. And Section 34, which talks about how acting members of the strata committee may step in.

This particular question as I said, related to a co-owner being an acting member and my answer to that question was that the co-owner will not be eligible if their other co-owner, the other owner of the same lot is also a committee member. That's why the strata manager was asking me because she knew that there was, for example, two owners of lot two. Husband and wife. The husband was already a committee member and the question was, can the wife step in as an acting member. Now the wife is not eligible to be a committee member because the husband is already a committee member and they own the same lot. The only way that, that could happen is if the wife actually owned another lot in the building.

Reena Van Aalst: A different lot.

Amanda Farmer: So, she separately owned lot six then she could be a member of the committee, and therefore she could also be an acting member of the committee. The concept of who's eligible to be appointed to the committee. How a committee election should be run. Who can nominate who for a committee can actually be quite complicated and we have a few new rules under the new Act.

I don't know about you Reena but I've been attending meetings where committee elections have taken a little bit longer while chairpersons, and strata managers, and even myself, we get our heads around making sure all the nominations are legally correct, and that the election is properly conducted. I thought I'd just cover that off on the podcast for anyone who's a co-owner who wants to be on the committee to be very clear about the eligibility requirements and I'll put links to Section 31, and 34 of the Strata Schemes Management Act in the show notes.



Publication Date: December 19, 2017
**YSP Podcast Transcript: Episode 092. In Conversation: co-owners as strata
committee members and collective sale bullying**

I do actually have an eBook, which is available on the, Your Strata Property website, and it sets out what the new requirements are under the new Act for Strata Committees. You can get that from www.yourstrataproperty.com.au/eBooks. It's got a small purchase price there, and of course if your member of the Your Strata Property online community you get all of those eBooks for free. So, you can head over and check that out.

How about a win for this week Reena. What's gone well this week?

Reena Van Aalst: I had a client approach me from a strata scheme for some personal consulting advice because she was quite concerned that there are three buildings, Amanda in her street. Three strata schemes that are all adjacent. There seems to be, I think the same strata manager manages all three. Basically, she's on the committee but what she's finding is that there's a local real estate agent that's been trying to gain interest in the strata renewal process. And, it's quite a substantial amount of land. It would be quite a big site if all three strata schemes came together and were redeveloped.

The issue she came to me about was relating to the fact that, there's a bit of a faction that's in the committee and they're going off having their little meetings, Amanda with the strata manager, and with the real estate agent, and in a sense, there's no documentation. There's no formal resolutions. She asked me, what steps need to be taken. I said to her, and she's quite concerned. One committee member's already resigned because they're quite stressed out about the whole situation.

I said to her, "*Strata renewal process is quite a lengthy process,*" and I gave her some fact sheets from Fair Trading and other information that I had. I think this goes back to our point, Amanda of two things. One, following that legislation, and in this case, we've got strata committees not acting properly. The strata manager's appearing to be not being objective, and being involved with this real estate agent. I'm not sure if there's anything there. I'm not certain that there is.

From a lot owners point of view, and the strata committee member's point of view, when they see this happening, people start and think, well what's this strata manager getting out of this? Even, though there could be nothing in it. Could just be that they have a professional relationship and that one's trying to help the other one. I think that the real estate agent is trying to railroad it through. She's very, very uncomfortable. Again some committee members, not making proper decisions, informally convene meetings where there are proper motions.

For any lot owner living in that scheme she said to me, she gave me copies of all her agendas. There's hardly any. And nothing at all about this strata renewal process even being discussed or the real estate agent being involved. I think she was very happy that I sort of gave her some comfort and advice that, this can't happen and even though it's being proffered as fait accompli it's not definitely the case at all. That it's quite a lengthy process and the committee must formally meet. Document what's been happening. The interest that's been provided through the real estate agent. Then obviously take the steps that need to be taken. It's just an example I think Amanda again of, we talked in the last episode about dysfunctionality. This is not dysfunctionality per se, but again it's not a very well functioning committee and someone has to feel that they had to come to me and pay money to actually get some advice because they were concerned that their committee wasn't acting properly. And, indeed they're not.

Amanda Farmer: Yes. It's interesting that you raise this, this week Reena because it was only two weeks ago I was contacted by a lot owner in a very similar situation albeit in a large scheme. She said exactly the same thing. The committee seems to be talking to real estate agents. Talking to developers. There seem to be plans in place to sell the building, and I have not seen one motion on the agenda of a single meeting that deals with this. Help! Is the building going to be sold out from under me without me knowing.

It's interesting to hear that, that is going on in other places and you're hearing that too. You're exactly right there are very strict requirements when it comes to a collective sale under the Strata Schemes Development Act. Meetings must be held and the meetings must have particular prescribed agendas and must resolve particular prescribed motions. One of the very first motions that need to be resolved is by the owner's corporation in general meeting to opt into the collective sales process that is set out in the Strata Schemes Development Act.



Publication Date: December 19, 2017

YSP Podcast Transcript: Episode 092. In Conversation: co-owners as strata committee members and collective sale bullying

So, if that hasn't happened. If you haven't had a general meeting where a motion has been put to opt into the collective sales process under the New Development Act, then your strata committee cannot take any further step to proceed with that collective sale process. For example by spending money on valuations. Spending money on consultants, and experts who are preparing reports, and plans, and proposals to do with a collective sale. You haven't opted in. You haven't resolved a motion to opt in. Then none of that should be happening.

The real issue here is money. What money is being spent getting advice? Getting valuations. Is that money budgeted for, and does the committee have the authority, therefore, to be spending that money and that was certainly the concern of the lot owner who approached me. She felt like plans, and forecasts and valuations were being done, and there hadn't been a single meeting explaining to owners what the collective sale process was, and complying with the Act.

So, I did exactly as you did Reena. I sent her some information about what those requirements were, and gave her some comfort and said, *"Look, when you do get that agenda notice, that tells you we're about to propose the kicking off of this process make sure you do attend that meeting. If you need some help at that stage then I'm here."* But in the meantime, if they seem to be going off on their merry way, and I understand that a lot of these times real estate agents are involved in pushing these kinds of sales, their commission would be quite hefty if they can tee it up.

Reena Van Aalst: Well it's three separate strata schemes, Amanda. There's maybe about 50 or 60 in each one. So it's quite big.

Amanda Farmer: It's not to say that these owners and the lady who contacted me said, *"Amanda I might be happy to sell. But I want to make sure that it's done properly. That it's the right time. Whether they're maybe a rezoning around the corner so it might be better to wait until that happens."* There are all these issues. It wasn't simply that she wanted to have her forever home and not move, but she wanted to make sure the process was being done properly. So, that's definitely about reaching out to people like myself, and Reena, to educating yourself about that process and there's definitely a lot of information out there around these collective sales, which we'll be seeing more and more of.

Reena Van Aalst: Yes. I think, Amanda you just hit the nail on the head. It's also about transparency. It's not about people not wanting the process to occur. It's about doing it correctly. I think in a lot of cases where things go wrong in strata schemes invariably is when people don't follow the procedures and the Act, and that's where people get themselves into trouble. I think it's a good lesson just to make sure that you do things correctly, and strata committees are having meetings in the first instance to discuss the idea before you go down a formal path.

Amanda Farmer: Yes. Exactly. All right. Good. Excellent to cover that of. Now I have a very quick win to share this week and Reena you know about this one. Reena is together with me a member of the Steering Committee for Women in Strata, which is a networking and support group for women working in strata management.

A few months ago we officially launched our new mentoring program, and we called for applications from both people who would like to be a mentor to a young woman in strata management, and young female strata managers who would like to be mentored. I'm very pleased to confirm that, that has been a very popular program. We've had our applications come flooding in from both mentors and mentees, and we'll be kicking off the next phase of that process really soon.

So, I am a huge advocate of mentoring. I've had many mentors over my years in my professional, and my personal life, and the most important mentor of which has actually been Reena's husband, Robert Van Aalst. A lawyer of many years. My very first legal position. I worked with Robert and those who know me and have heard me speak about my history before, will know how important Robert, and Reena have been in my professional life.

Reena Van Aalst: Thank you.

Amanda Farmer: So mentoring is just so crucial I think for people. I always say young people, young people but people who might be new to our profession. At any stage of your life when you're looking to maybe start a business, or grow your business to the



Publication Date: December 19, 2017
**YSP Podcast Transcript: Episode 092. In Conversation: co-owners as strata
committee members and collective sale bullying**

next level. Make new connections. It's really important to have mentors. So, we really shared that message a couple of months ago when we launched this program, and it's wonderful to see how well it's been received. I'm really looking forward to seeing both those mentors and mentees, if that's the right word, flourish.

So yes. Just wanted to share that one and thank you, Reena, for your work on the committee, helping to make that happen as well. Reena Van Aalst: It's been a great year and I totally agree that having a good mentor, I mean number of mentors I think is probably important. Robert's been my mentor as well. So, I've been quite lucky. You and now have had the benefit of his experience and expertise. I think in terms of, for women especially I think sometimes women lack confidence, and I find that even though we have the capability, and we have a lot of skill sometimes we don't feel like we're going to be good enough for something. Then you need someone like a mentor to challenge that notion and get you out of your comfort zone, and get you going.

Amanda Farmer: Absolutely.

Reena Van Aalst: It's a great idea that we've had that program that's introduced women in strata and meaningful, and being part of it next year.

Amanda Farmer: Yes. And, next year is just around the corner. It shall be a big one. I always say if my next year is just as good as my last one has been, I'll be a happy person and it always turns out that it's even better. It's a good time to be planning as we said and planning for that big year. I don't think I'll talk to you until the New Year, Reena.

Reena Van Aalst: No.

Amanda Farmer: Well I might talk to you but maybe not on air talk to you.

Reena Van Aalst: That's right. I'm sure I will talk to you, Amanda but not through the podcast.

Amanda Farmer: Exactly. Well best wishes for the break, and also to our listeners as well. Thank you for a fabulous year. It's been wonderful sharing it with you.

Reena Van Aalst: Yes. Have a safe and happy Christmas everyone, and we'll see you back next year.

Amanda Farmer: Yes. Enjoy.

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 comment section, which Amanda will answer in her upcoming episodes. How can Amanda help you today?