

Publication Date: 17 April 2018
YSP Podcast Transcript: Episode 108. Can strata managers accept cash payments of levies at meetings?

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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 very well. Thank you very much. How has your week in strata been?

Reena Van Aalst: Yes. Very busy actually, but I had one meeting this week, which was quite refreshing actually. I'm really pleased.

Amanda Farmer: Just one.

Reena Van Aalst: One meeting.

Amanda Farmer: Wow. How did you get away with that?

Reena Van Aalst: Yes. I think it's just good planning I think. And the timing of meetings when they roll over on a bi-monthly or a monthly basis, just having that I didn't have any this week except for one so it was quite good.

Amanda Farmer: Yes. Good. I do talk to some managers who by some stint of bad luck, they end up with all of their meetings, or most of their meetings in a particular month of the year, and they have that crazy time.

Reena Van Aalst: Yes. I've had that happen before. Yes.

Amanda Farmer: Yes. Its sort of meetings tend to align themselves in your portfolio, but good on you for just getting on with the one this week.

Reena Van Aalst: Yes. Very happy.

Amanda Farmer: Alright. Well, let's jump into your challenge for this week, Reena.

Reena Van Aalst: The challenge that I had this week was from one of my previous lot owners, who actually contacted me, but actually we're at a meeting where there was a proxy bearer who's nominating themselves for this strata committee, and this was actually a tied vote, and even though there was a ballot, it was still tied.

No one called for a poll so there was no UE basis, which may have broken the deadlock, but unfortunately no one realised that as a proxy bearer you don't really have the right to nominate yourself to the strata committee unless the person whose given you the proxy has actually stated that on the proxy form or in an email or some other form, and I think because of this problem, if the strata manager at the time had known that she wasn't eligible for election, then there wouldn't have been a deadlock.

And this woman has apparently been allowed to do this every year, Amanda. And so I think for the owner, who didn't think it was right if the manager has been allowing this to happen every year and then the next year you say, "No. I'm sorry. You can't do this anymore."

Amanda Farmer: Yes.



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Reena Van Aalst: Or you don't give them any notice beforehand, so just something for owners and managers to think about. Just make sure that you cross your I's and dot your T's. Get your nomination in writing if that is the intention of the person who's giving you the proxy.

Amanda Farmer: Yes. I'm assuming the proxy holder was not an owner?

Reena Van Aalst: No.

Amanda Farmer: And of course, only owners can nominate themselves.

Reena Van Aalst: Yes.

Amanda Farmer: If you are a non-owner, you need to be nominated by an owner, and this person did not have a written nomination from an owner, the person, usually you'd find the person appointing the proxy if they also want to nominate that proxy holder for a position on the committee, you'll get that nomination in writing prior to the meeting.

Reena Van Aalst: Yes.

Amanda Farmer: Yes. So definitely a common trap for players, for strata managers, for chair people, being across not only the powers of proxy holders but who can stand for election on the strata committee. It's something we keep coming back to, don't we Reena, on the podcast, those procedures, and always a good idea for listeners to refresh on that.

Reena Van Aalst: Yes. I think my experience has been, Amanda, that 95% of these errors that occur in elections of strata committee members aren't an issue unless something goes wrong or someone challenges it and finds out later on that person didn't have the right, and then they challenge it. They go to Tribunal and unfortunately, it can get messy after that.

Amanda Farmer: Yes. And it's a point that you make Reena, that in some buildings they can be following an incorrect procedure for many years, unbeknownst to them, and perhaps on the incorrect advice of a managing agent, and an expectation is then set that this is how we do things. We've always done it this way so it must be legal, and it can come as a shock when buildings do get qualified manager or a more experienced manager or even a lawyer in the room who says, "*Hang on. No. That's actually not legal.*"

It can be hard to change that culture, if you like, of "*Well, nobody's getting hurt so why don't we proceed this way,*" but as you say, Reena, it only takes one disgruntled person to miss out perhaps on a committee appointment or to be unhappy with the appointment, and then to have very good reason to challenge that.

Reena Van Aalst: Yes.

Amanda Farmer: You can end up in protracted and expensive legal proceeding, and nobody wants that.

Reena Van Aalst: No.

Amanda Farmer: Better off to do it the right way the first time around.

Reena Van Aalst: Yes. Get it right.

Amanda Farmer: Alright. That's a good one.

My challenge this week is also relating to meetings, and this was a question posted by a member inside the Your Strata Property online community in our forum there, and it was a great question. It's something Reena; I know you've been asked. It's something that many managers and lawyers are asked when advised strata buildings.

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If an owner has not paid their levies, but they turn up to the general meeting with proof of payment, perhaps they've made an EFT, or a DFT payment prior to the meeting, or they've got cash in their hot little hands that they want to hand over in payment of their levies before the meeting starts. Can we accept that payment and is that person then financial and able to vote?

Reena Van Aalst: That's very interesting question, Amanda, because this has happened on so many occasions for strata managers dealing in so many general meetings, and obviously the New Act, it'll be also applied to committee meetings. You've got to be financial for those.

The advice that I had received many years ago from a large building that I used to manage, where this was a conscientious issue, was that the money had to be in the bank and cleared, so, therefore, even though they may have paid by EFT and they have evidence, cash definitely not.

But the thing is, I suppose, sometimes you've got to try to use some discretion, and maybe if someone's, for example, owes \$1.20 because when they had paid their levy, they had paid it let's say one day late. There was some interest. And they weren't aware of the interest because the interest won't show up until they get their next levy statement so sometimes in my experience, I've always allowed those smaller amounts to be accepted, because it was really not that they had realised that there was still a small amount.

Now, the EFT thing is another interesting one, because obviously if someone has paid, it's like someone ... and it has gone into the account. Now, it can be returned. I just had the bank write to me. Someone had paid their levies and obviously they had been dishonoured, so there's a dishonour fee.

Amanda Farmer: Yes. The interesting thing I find is that when you look at the wording of the legislation, it does actually say that the money has to be paid before the meeting. It doesn't say received. It doesn't say received by the owners corporation. It says paid before the meeting, and remember it's only the amount that's outstanding as of the date of the notice of the meeting.

Reena Van Aalst: Yes. Not the date of the meeting.

Amanda Farmer: Correct. So if there has been an amount that has fallen due between the notice going out and the meeting taking place, that does not make a person un-financially if they paid, but it does say paid, and when I was giving some guidance to this member in the forum, I took a pretty conservative approach and said, *"Well, this person is paying it, whether the check bounces or the EFT doesn't go through, and the owners corporation doesn't receive it is not to the point."*

If we take a strict interpretation of the legislation, it's that it be paid, and this person is turning up to the meeting, they have cash, for example, and this was the specific question I was asked, if that's being paid to someone who has the authority to receive that money, then it's being paid before the meeting isn't it?

And why shouldn't we give that person the right to vote, and if you look at it from a practical perspective, and I think that's what you do Reena, I think the risk is greater refusing that person the right to vote than it is giving them the right to vote, even if you're doing so and they technically might be un-financial.

When there is such a fine line there, I think we have to err on the side of giving them the vote.

Reena Van Aalst: Yes. I think this is the different between someone turning up with \$3,000 cash, which in a sense, you don't feel comfortable carrying that sort of money with you home, and then ... I mean, the bank the next day would be okay, but I always worry about having that sort of money on me. What if something happens between when it gets banked and while it's been in my possession?

Amanda Farmer: Yes.

Reena Van Aalst: I think that's something else that ... I think. We always had previously a company policy where that we wouldn't take those sorts of amounts of cash, but anything smallish or up to a couple hundred dollars was okay.

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But the thing you mentioned, Amanda, about whether or not, erring on the side of caution, years ago I actually had ... this is when I first started in strata. It would have been 2001 or 2002 actually, that many years ago, and there was a meeting where there was a special resolution, and so this owner turns up and she gave the managing agent at the time, which wasn't me, I was just taking to the meeting just to assist, a check.

And then, can't recall now, but I know then the check bounced the next day, but I think her vote had made a difference because it was special resolution. I don't think the managing agent at the time, who I was working for, said anything about the fact that the check had bounced.

So knowing you, but I'm not sure in those circumstances Amanda, where that person's vote does make a difference to the outcome, but then again, what you're saying is correct. It says paid. It doesn't say cleared funds.

Amanda Farmer: I wonder if there is a way for owners corporations to stipulate, in a binding manner, how they will accept payments.

So for example, you may only pay via the DFT system or EFT. We do not accept cash payments. We do not accept personal checks. We accept bank checks.

As a matter of a by-law, I suppose. I suppose you'd need to ...

Reena Van Aalst: Oh. I don't think you can stop someone from paying with a personal check, because I think most of the time people's checks don't bounce Amanda, it's just in the minority cases.

Amanda Farmer: Yes. And maybe a by-law to that effect would be harsh, unconscionable or oppressive our new law here in New South Wales, but I'm just thinking of ways to narrow the room for dispute.

Reena Van Aalst: Yes. No. You're right. Because a lot of the older people Amanda, don't know how to use EFT or internet banking, so they many times they don't even send the check to strata pay or DFT. They send it to us, and then we end up going to the bank or the post office and banking it on their behalf.

I think sometimes that might alienate a generation that is not comfortable with internet banking.

Amanda Farmer: Yes. Absolutely. Fair enough. I have made that suggestion like a true, I'll say Gen Y. I think I'm on the cusp of Millennial and Gen Y, but I prefer to associate with the Gen Y.

What were you going to say?

Reena Van Aalst: As a strata member. Thought you'd like that Amanda.

Amanda Farmer: Thanks, Reena.

Well, yes. I think the moral of this story is amounts can be paid before the meeting. That's the requirement of the legislation, and if they are, I think managers should be erring on the side of caution, accepting that payment, and if that brings the owner up-to-date then allowing them to vote.

Reena Van Aalst: Yes. The reason I just mentioned the last comment about you is that I think when you had Sean O'Dea on your podcast, that he talked about when he was a lot owner, and then when he's a strata manager, the difference of what he realises what managers do compared to when he was a lot owner. So that's why I'm bringing that up.

Amanda Farmer: Yes. For sure. That was a good one. So many people enjoyed that episode. Quite a few reached out to me.

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He was great.

Reena Van Aalst: Yes. He was fantastic. I mean, obviously, I was one of his managers many years ago so I was really pleased to hear his podcast.

Amanda Farmer: Yes. Alright. Now, your win for this week Reena.

Reena Van Aalst: Well, the win that I had this week was that I had a large telecommunications company that we're dealing with was trying to charge \$100 to change the name of the person on the account, because as many managers know, when you're in either Telstra or any of these large companies, Exetel.

They need to know who the authorised person is, and when it's a strata scheme, that's like an entity, they need a person. So the person that had actually been involved in the account was a previous building manager, so when this buildings manager wanted to make some inquiries about the account they wouldn't let him. They said you're not authorised, and we need something in writing. So he gave them something in writing to change the person that was allowed to deal with them, and said, "*Oh. We're going to charge you a \$100.*" And I said, "*Oh. But because you're a good customer we'll reduce it down to \$25.*"

Amanda Farmer: Thanks.

Reena Van Aalst: And then he said, "*Well. I'm not going to pay you \$25 just to click a few keys on a keyboard.*" He went right back and said, "*I don't think that's lawful that you can charge just to change the name on the account.*"

And I said, "*But we're a re-seller.*" I'm thinking, well, that's not really relevant. So I said, "*Well, we're going to make a complaint to the telecommunications office manager.*" I really wasn't, but I just said that because I was so annoyed like he was. It wasn't about the \$25. It was just about the fact that they wanted to charge us just to change a name.

The minutes I said that. "*Oh no. We don't want any complaints. We'll waive the fee. They'll be no fee.*"

Amanda Farmer: Oh, I like it. Nice one.

Reena Van Aalst: But I just feel like you have to go to measures that you don't want to go to, but unfortunately, I think strata schemes tend to get taken for a ride by companies, and even contractors, because people think oh, there are so many people paying for the bill, and sometimes the corporation may not even see the bill, I mean, they may not even realise there's been a charge.

Amanda Farmer: Yes.

Reena Van Aalst: That was a good win I thought for.

Amanda Farmer: Yes.

Reena Van Aalst: And I put it in writing because it was something I was really happy about.

Amanda Farmer: Good. And thank you so much for sharing it. What a great forum to share that on. All the managers are listening now. They're thinking, hey, I got that charge last week. Great. Thanks, Reena. You've just given us the way out of that.

And you know what, everybody listening, that is a sign of a good manager, and that's the kind of thing Reena does. I've been working with Reena since I was 18 years old, and she is thorough. She knows her stuff, and she will go in to bat for you. And as complimentary as I can, I want to say she's like a dog with the bone.



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Reena Van Aalst: Oh. Thank you.

Amanda Farmer: She will not give up.

Reena Van Aalst: Thank you so much, Amanda.

Amanda Farmer: And good on you. Thank you very much for sharing.

Reena Van Aalst: I've been referred to as a rat up a drainpipe, but I'd rather go with the dog with the bone.

Amanda Farmer: No. Not that. That's the wrong expression. That is the wrong expression.

Reena Van Aalst: Exactly.

Amanda Farmer: She is persistent and she is nine times out of 10, she is successful, so good on you.

Reena Van Aalst: Thank you.

Amanda Farmer: Alright. My win for this week comes from some clients I was assisting a little while ago. They have beautiful rooftop balcony, I'm going to call it, and they're in Sydney's Northern Suburbs and they have fabulous view of the harbour from this rooftop balcony, and it's accessible via their loft, and they sort of walk out these nice double doors onto the rooftop, and it is lot property, this particular balcony.

And it's quite large, and it has some plantings and nice green space, and they set up their chair and table and they have a little coffee out there in the mornings.

Now, they had recently been told by their owners corporation that they actually couldn't use that space anymore, because it did not have a compliant balustrade rate, and therefore it was a safety issue with them going out onto their balcony and the owners corporation had restricted them from using their own lot property because of a balustrade issue.

Reena Van Aalst: They didn't actually ... now, they would actually fix it or make it compliant?

Amanda Farmer: That's the issue, Reena. That's the issue. This particular building seemed to have missed that point. They were very wrapped up in the fact that the rooftop balcony was lot property and the balustrade was non-compliant and they had this incorrect view that it was the lot owners responsibility to make the balcony safe.

And when these clients came to me in much frustration, I looked at the strata plan and I said, "Well, the balcony may indeed be lot property. Yes, it is, but the balustrade itself is common property, and it is the responsibility of the owners corporation under Section 106 of our Act in New South Wales to properly repair and main that.

And where it has been identified as being unsafe, then it is for the owners corporation to fix that, and shouldn't be restricted from using your property because of the Owners Corporation's failure to do that work.

So I assisted them in drafting a letter to the owners corporation just explaining that and explaining that the inability to use that part of their property was causing them reduction in their amenity, a loss of value in the use of their lot, and that the owners corporation needed to get their act together and get this balustrade fixed.

And the last I heard that was underway, so really happy with that result, but kind of strange. This was a building that had a manager. They seemed to, I think perhaps because the layout was unusual. The balcony itself was, I say rooftop because it was the roof of the lot below, so it sort of extends out and they've just forgotten that it was exactly like any other balcony that might be

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lot property but the balustrade itself is common property and they needed to attend to it being fixed regardless what that's going to cost, unfortunately.

If they didn't have the money than they need to raise it.

Reena Van Aalst: How did all this arise? Was there a work, health, and safety report being undertaken? What was the catalyst for this? I mean, I'm sure that they had to be there for some time?

Amanda Farmer: I think there was some work being done around the building.

Reena Van Aalst: Okay.

Amanda Farmer: And there had been some contractors around and looking at things like waterproofing, and that kind of stuff and it had been pointed out that this was a particularly unsafe place, and my clients had felt quite comfortable on the balcony, being quite a large area, and they sort of do their gardening there, and as I said, have their coffee, and hadn't really thought about it.

So when it was pointed out by this contractor, then the owners corporation sort of jumped on that, and said, "No. Unsafe. We need to block that off. You won't be able to go outside onto that area." But had made no steps and no signs of wanted to fix it. But a good end to the story because the Owners Corporation has been spurred into action, and I think it's always important to share those with managers and with lot owners as well, that if you're in a similar situation then a little bit of knowledge can go a long way.

And I do find, how about you Reena? I do find these days a lot of work people are coming to me with has to do with repair and maintenance of common property. I mean, what is going on in some buildings? They just don't seem to understand that this is not negotiable. This is a strict duty. You must do it. The courts in New South Wales have said it is strict. It doesn't matter that you think it's too expensive or that the lot owner has somehow contributed to the damage to the property. Get it fixed and argue about that stuff later.

You've got to get it fixed. It's only going to get worse and be more expensive in the long run.

Reena Van Aalst: Yes. I think you hit the nail on the head, Amanda when you said, sometimes it's too expensive, so I think with repair and maintenance of common property, and upgrade and replacement when necessary, that unfortunately that sometimes in some buildings that's being left to such a state that there's so much to do really, and it's just trying to work out some sort of priority. And also means that the funds are available to make those commitments.

And again, this is where the whole capital works fund forecast comes in. Previously, seeking fund plans. So if people actually look at those things, and most of them don't, then you'd realise that you should be raising more money each year to try to make sure that when these things do need to be fixed and replaced, that the money is sitting there, not having to use special levies.

Amanda Farmer: Yes. Absolutely. And you know, no building wants to be before the Tribunal, with a very long, very expensive scope of work being put to them and having an order from the tribunal to do all of that all at once.

Reena Van Aalst: Yes.

Amanda Farmer: That is an overwhelming task, and buildings who do ignore their capital works fund forecast can end up in that position. Not a good place to be.

Alright. Well, I think that is it for me this week, Reena. Anything else from you?

Reena Van Aalst: No. All good Amanda.



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Amanda Farmer: All good. Well, lovely to chat with you as always, and I shall catch you next time.

Reena Van Aalst: Bye, Amanda.

Amanda Farmer: Bye.

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