

Publication Date: 26 June 2018

YSP Podcast Transcript: Episode 118. The dangers of global renovation works by-laws

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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 very well, thank you very much. It is a special time of the year for me, I have just had a birthday and the week this goes to air, it'll be in a bit ... I'm in the middle of birthday festival, let's say that.

Reena Van Aalst: I suppose it's not a big one, is it? It's just a regular one?

Amanda Farmer: They're all big these days, Reena. They're all big.

Reena Van Aalst: I think after you hit 30, everything's big right?

Amanda Farmer: Yes, yes indeed. And everything should be celebrated. So a few events this week which I'm looking forward to and we shall all be enjoying ourselves. What have you been up to?

Reena Van Aalst: Yes. Nothing much, just the usual, Amanda. Actually, Veronica Morgan, who we did a podcast together this week, she's actually started her own podcast called The Elephant in the Room. It's available on iTunes and this week, I'll actually be going there to record an episode. So yes, I'll believe that you'll be also, Amanda?

Amanda Farmer: I will be there, yes. I'm not sure if we're in on the same week or the same day but yes, I'm really excited. I have listened to a few of her episodes already with Chris Bates and they have fabulous guests and highly recommend the podcast to anyone with an interest in property.

Reena Van Aalst: Yes, definitely.

Amanda Farmer: And tune in for Reena and me, we're coming up.

Reena Van Aalst: Yes, again.

Amanda Farmer: You can't avoid us, we're everywhere.

Reena Van Aalst: Not those two again.

Amanda Farmer: Do you meet people at conferences now, Reena, and they say, "You are everywhere. You're on my LinkedIn, you're in my inbox, you are in my ears."

Reena Van Aalst: Yes, and they go, "We listen to you all the time so they don't feel like they haven't sort of like seen me because they listened to you."

Amanda Farmer: That's right.

Reena Van Aalst: Yes, it's nice.

Amanda Farmer: You're best friends and you've never met. The wonders of technology. I do love it.



Reena Van Aalst: Exactly.

Amanda Farmer: All right, let's jump in. What has been your challenge this week, Reena?

Reena Van Aalst: In one of my schemes, I actually had an apartment that was above the apartment that was actually damaged. There was a washing machine that had flooded, so I think the occupants left the apartment for the whole day, they put the washing machine on and then I think in the evening, when they returned, it had leaked, it had flooded the apartment below to the effect that the corridors in the building had water penetration and the apartment below was severely damaged to the point that the magnesite in the concrete had gotten wet and they actually had to remove the magnesite because it obviously caused damage.

And the apartment had to be vacated because... I mean, it was rented out anyway, the tenants apparently were leaving just fortuitously in the next few weeks, so it wasn't as if... I mean, that was already planned. And the strata community obviously needed more information about why the owners cooperation was basically being asked to pay for this through its insurance policy. And I think that a lot of people don't understand the concept that every time there's a damage to common property, doesn't matter how it's caused, it could be caused by an appliance, it's not a fixture in this case. But any resulting damage to common property and any loss of rent that that owner suffers has to be paid for by the owners corporation through its insurance policy.

The other thing that sort of added a bit of fuel to this fire was the fact that the fixtures that were damaged also had included items that the owner had undertaken renovations and not told the owners corporation about it. So there was a bit of delays in that case.

But apart from that, I think it's just a reminder to owners and managers that when common property is damaged, it doesn't really matter what the cause is to the result in damage. If it's due to an insurable event, in this case it was, it was accidental damage that occurred where I think the hose came out of the tap and it flooded everything. So yes, and so it took quite some time and at the time, the broker is saying, the loss of rent is growing and if we don't get approval to proceed then the owners corporation could be held to account.

You know, finally, the approval was given to receive but again, just a reminder, Amanda, that it doesn't matter what happens as a cause that the resulting damage has to be put through the owners corporation's insurance policy if it is an insurable event.

Amanda Farmer: Yes, and it's going to be an insurable event, as you say, Reena, if it is accidental damage and I think that's the key there. This isn't something that the tenants set about to do, it wasn't intentional. It wasn't through their-

Reena Van Aalst: It wasn't like a water leak that had been there to fester for years and years and that caused the damage. Amanda Farmer: Or if it had been an owner doing renovation work, for example, and had penetrated a waterproof membrane in the course of doing that. Then, of course, that's something that the owners corporation may then seek recourse against that owner and recover some of their loss. Again, if the event wasn't insurable and there was some loss of course then that would be a different story but accidental damage, I think, is the key to remember.

Reena Van Aalst: Yes, exactly right.

Amanda Farmer: All right, thanks for sharing that, Reena. My challenge for this week relates to by-laws and I am seeing more and more template by-laws attempting to deal with minor works and also major works, interestingly enough. I'm not sure if you are seeing these, Reena, but I did have some clients come and see me a few weeks ago and it wasn't the first time that I'd seen these templates. And I know they are templates because I've seen them floating around a few different buildings.

Reena Van Aalst: Oh, the blanket by-laws?

Amanda Farmer: Yes, the blanket by-laws, the global by-laws and what it is, just to particularise that a bit more, it's a single by-law that attempts to deal with all work ever done, ever proposed to be done in a strata building and to approve it or at the very least, provide a process for the strata committee to approve it. And I have significant discomfort when I see these by-laws and I'll give an example.

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The by-law I was looking at a couple of weeks ago attempted to approve all past minor renovation works and it did specify what minor renovation works were, borrowing from Section 110 of the Act, so installation of air conditioning, kitchen renovations, hard flooring. It added a few things in there, I think, maybe exhaust fans and some things that are not particularized in Section 110. But, it proposed to approve all past works if they had been done. It proposed a regime where anyone wanting to do those works in the future could apply to the strata community for approval, and it shifted responsibility for the repair and maintenance of the common property affected by those works over to lot owners.

And my discomfort around that arose from the fact that I knew that this building was not seeking consent forms from lot owners who would then be taking up that responsibility to repair and maintain the common property. And I accept that Section 110 expressly says that the requirement for specific by-laws and the requirement for consent which is in Section 108 does not apply to minor works. But where you have a by-law that is globally approving all past minor renovation works and shifting responsibility over to lot owners for affected common property, how are you to know if you're an owner whether any of that work has been done in your lot? Whether it applies to you, whether you are now taking on responsibility for something like an air conditioning unit that might have gone in 15 years ago and might explode in two weeks' time or might blow out the power?

And the templates that I'm seeing have very broad indemnity clauses included where the lot owners is taking full responsibility and completely indemnifying the owners corporation. And when I'm advising lot owners who are looking at these by-laws and say, "What in the world does all this mean?" I say to them, "How can you possibly vote in favour of this?"

Reena Van Aalst: Yes, I think, 110 mainly deals with minor works and it deals with just general resolution at a general meaning, it doesn't deal with by-laws but as you say, which is why 108 deals with, as you were saying. But, does it actually reference to lots, the actual work that was done?

Amanda Farmer: No, it does not and that is something that I always raise with clients who come to me to ask for global works by-laws, particularly where they are attempting to approve past works. I say, "That's fine, we can do that but we need to specify the work that has been done and where it has been done because you're about to shift responsibility for the common property over to the lot owner and in my view, to avoid the by-law being harsh, unconscionable or oppressive, you should be getting the written consent of the lot owner to agree to take on that quite onerous responsibility."

So I can see these by-laws being challenged in the future where they are globally approving past works, they are not getting consent from owners. I can see them being challenged on the grounds that they are harsh, unconscionably or oppressive and we now have that ability to challenge by-laws in New South Wales on those grounds. But even more concerning, what I saw a couple of weeks ago with these clients who came to see me was that there was a global by-law for major works as well.

Reena Van Aalst: Sorry, Amanda, just for ones that had already been completed or prospective work that was going to be done.

Amanda Farmer: The by-law was a bit confused about that because it did have a clause ... it did actually surprisingly have a clause in it that said to the extent any major works have already been completed as the date this by-law is registered, then this by-law applies to those works.

Reena Van Aalst: Oh, gosh.

Amanda Farmer: I thought how could you do that where you are not, once again, seeking consent, written consent forms, this is definitely the type of work that Section 108 would apply to so altering the common property in Section 108 says that you do need a specific by-law which details exactly the work that's been done and you do need a consent form. The by-law did make some reference to the fact that if the strata committee determines in its discretion that this type of work requires its own by-law, you may be required to submit your own separate by-law. And I thought-

Reena Van Aalst: Wait a minute, how can the committee decide that? What's the criteria or the legal basis for them to decide what would be covered under this major works by-law and then what wouldn't be covered and needed a separate by-law, Amanda.

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Amanda Farmer: Yes, absolutely. Having that discretion rest in the committee was bizarre to me especially when our legislation is quite clear about needing specific by laws where major works are going to be done that alter or affect the common property and for those by-laws having to detail the work and having to include the written consent of the owner whose taking on the benefit and the burden, if you like, of the by-law.

Reena Van Aalst: Yes.

Amanda Farmer: So, I think they're dangerous. I'm sure they're floating around with many managers and many buildings and this one that I was dealing with a couple of weeks ago was put to my clients on the basis that, oh this is relevant to the new law, this is just a standard, everybody's doing this.

Reena Van Aalst: So, was this by-law drafted by a lawyer, Amanda?

Amanda Farmer: I suspect it was.

Reena Van Aalst: Yes, it's a bit concerning when, it's one thing for committees who are ignorant about the law and need guidance but when lawyers are actually producing these types of by-laws, where not even the works that were done previously, you don't even know, like anything that was done is being covered. I mean, that's just a broad brush statement.

Amanda Farmer: Yes. I think it comes from pressure perhaps from owner from buildings. I've seen a little bit in the media lately in some commentators on strata law who criticise lawyers for the amount they charge for drafting the bespoke by-laws and saying, well, hang on, don't you do a thousand of these, can't we just have a template that we can use just to cover all work forevermore. And I think what's happening is some lawyers are saying, oh okay, well, here you go, here's the template. I don't know, maybe that's being handed over with some kind of disclaimer that this may not be appropriate or this may not apply to you. I don't know what advice is being given, maybe they have been advised to go and get consent forms from every owner for this kind of work.

I don't know, I only see the result when the lot owner, or the strata manager comes to me. But, there is a reason why lawyers do charge for drafting by-laws, it's for the time that is spent thinking about exactly the work that's going to be done, how it's going to be done, how the responsibility's going to be shifted and one piece of work is not always the same as another. It might seem like that, to the untrained or inexperienced but I think it is dangerous. There is a place for templates but when we're dealing with works, renovation works, different levels of work, past work, future work, shifting responsibility for common property, we have to be very, very careful about templates.

Reena Van Aalst: Yes, and I think as I've said previously, everything is fine until there's a problem and there's a dispute and somebody's querying a decision or a ball that was passed and owners aren't happy with the work that's being done by the person who had a by-law perhaps. It's always when there's disagreement and in future proceedings that the way these come to light.

Amanda Farmer: Yes. Definitely. Okay, let's move over to your win for this week.

Reena Van Aalst: Well, this is actually from a community association that I used to manage and which I've still been assisting some of the owners, Amanda. Where a lot owner had submitted an application and that person was the chairperson and they were wanting to do some renovations to their community lot which included windows being moved. In this particular community association, they have a community management statement and it also is part of that statement, it references the architectural and landscape standards. In the standards, obviously, it describes what can and can't be done, because obviously, you need to maintain the architectural theme of the development. Of course, in this case, this person who had submitted the application, he was the chairperson, he then stood down and since then sort of provide some sort of distance there. The committee, of course, approved the application and then the owner on the adjoining lot took it to NCAT. Basically, through a lot of hard work and effort and getting lots of reports, she was successful in gaining approval for that application not to proceed.

I'll talk about this in another episode because now there's been further outcomes in terms of the application where he was stopped initially but now he's actually doing work. It's a win this time because she was successful in stopping his application which had

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been approved by the committee of that community association, erroneously approved and there is a provision in the CMS that if there's any dispute about architectural landscapes and their interpretation, which is very hard because a lot of people don't really understand necessarily everything that they're reading when it comes to architectural requirements. That the community should actually appoint an independent architect to give a final ruling on that application, and that would be binding and then it could be then taken to, I think, the society of architect or whatever.

In the first instance, Amanda, they didn't do that, they actually just approved it and then there was an owner who said I don't agree with the interpretation of this application and she won in NCAT. Since I actually had put this down there's been more advice about the application so I'll give you more information as it comes to hand in the[crosstalk 00:15:59]

Amanda Farmer: Ah, interesting.

Reena Van Aalst: Yes.

Amanda Farmer: So, she was an owner in a strata scheme subsidiary or she's got a CA lot?

Reena Van Aalst: CA lot, side by side, 2 houses side by side.

Amanda Farmer: Okay. Because I do see, it does become more complicated dealing with community associations where you might have a strata scheme within the community association somebody wants to do work, they need their work approved by both their owners corporation and the CA. The owners corporation might approve it, the CA might not or vice versa and those kinds of situations can become a little tricky to navigate. So, it sounds like this one was maybe bit more straightforward with-

Reena Van Aalst: Well, theoretically it was straightforward, yes.

Amanda Farmer: Theoretically straightforward, yes. I should take nothing away from that lot owner and her hard work and great success.

Reena Van Aalst: Yes.

Amanda Farmer: Yes. Okay, well my win for this week relates to the installation of child safety netting around a balcony. Now, Reena, you'll remember and those who attended, we had Cathy Sherry at YSP Live, our event back in April. She was very much involved a few years ago in some research around the dangers of children on balconies in strata apartments and the catastrophic injuries that can be suffered when children fall. We did have a phase there where there was a lot of attention placed on this and alarmingly a number of reports of children falling from balconies a few years ago.

In her research resulted in a product being brought to market which is Netzen, N-e-t-z-e-n safety netting. Which is produced by a company called Safety Nets For Life and Cathy actually brought this company to my attention and a client of mine has recently had their netting for their 7th floor balcony approved by their strata committee. I assisted with the drafting of a by-law for that netting and the strata committee has given their, let's say, in principal approval to the nets going in because they've been happy with the terms of the by-law and the by-law is going to be considered and we assume resolved with the support of the strata committee at the next general meeting.

Now, this was one of the first by-laws that I drafted relevant specifically to child safety netting and it is a by-law that I am now going to make available on my website. On the your strata property website as a template that you can download if you want to have a look at it.

Reena Van Aalst: That's great.

Amanda Farmer: You can head over to yourstrataproperty.com.au/templates and you'll see there's a number of by-law templates there and we now have child safety netting added to the list. Of course, if you're a member, inside the YSP online community, that

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template is free for you. So, a big win this week. I was very happy with that result and a very sensible building, understanding the dangers of children not being properly protected in their strata schemes and I think perhaps safety netting, as Cathy said, at YSP live, is the new window locks issue that we might see.

Reena Van Aalst: Yes, I think so Amanda. Yes, I suppose this would probably apply more for apartments for the sides that are much lower than they should be.

Amanda Farmer: Which a number of our older buildings, of course, in Sydney-

Reena Van Aalst: Exactly.

Amanda Farmer: Are just simply not compliant. Yes.

Reena Van Aalst: Yes. It's more of a need and perhaps maybe some buildings might want to add these to their general meetings in any event coming up so that owners don't have to do it every time and that's one more box that's been ticked off the safety list for buildings.

Amanda Farmer: Yes, absolutely. Just going back to our discussion about by-laws and the challenge that I shared this week in template by-laws, I think this is a good example perhaps of where a template can be used.

Reena Van Aalst: Exactly.

Amanda Farmer: Just a caveat. Where of course, you're dealing with a specific issue and a specific installation with detailed guidelines and requirements set out in the by-law for what type of netting and for how it's to be installed and things like that.
Reena Van Aalst: Yes, the colour, et cetera.

Amanda Farmer: Yes, yes, all of that stuff. Okay, so happy to share that win and another happy family living in strata, safely.

Reena Van Aalst: Wonderful news, Amanda.

Amanda Farmer: Thanks for much for today, Reena. Anything to add?

Reena Van Aalst: No, all good, thank you so much. I think it was actually quite a good one, I liked that netting by-law idea, it was a good one.

Amanda Farmer: Yes, the good and the bad. The good, bad, ugly and noisy should we say will be our new strata tagline. We get it all. We get all types.

Reena Van Aalst: Exactly.

Amanda Farmer: I'll catch you next time.

Reena Van Aalst: Bye Amanda.

Amanda Farmer: Bye.

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