

Publication Date: 10 July 2018

YSP Podcast Transcript: Episode 120. Be careful when recovering unpaid strata levies

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Amanda Farmer: Hello and welcome. I'm Amanda Farmer and this is Your Strata Property. You are hearing from me straight up this week because I want to share a little bit about this special episode you are about to hear. I'm giving you a sneak peek inside YSP live. This is a short segment from the podcast episode that Reena and I recorded live at our event held in Sydney in April this year, 2018, as well as our loyal listeners to the podcast and other sector supporters. We had a number of special guests attend that evening and share their strata wisdom with us.

We had Gary Bugden, a name well known to many of you. Dr. Cathy Sherry, Natalie Fitzgerald from Strata Sense. Paul Keating from Strata Community Insurance and of course Reena Van Aalst and myself. I kicked the evening off with a segment on short-term letting and my update on what's happening in that area across a few jurisdictions. Particularly looking at the question of whether we can use by-laws to regulate short-term letting in our strata building.

Then Reena and I jumped into a special episode of the podcast. What I like to call our live podcast. I'm going to tell you a little bit more about that in just a second. The evening then moved on to our panel session where we heard from all of our experts and covered issues including electronic voting. We had Dr. Cathy Sherry letting us know about the importance of child safety devices. In particular the installation of netting on balconies. There is about 60 seconds of pure gold there where Kathy explains the reasons why strata buildings owner's corporations refusing families the permission to install nets are doing so at their own risk, and I'm not just talking about personal injury, but also legal liability.

We covered off the question of harsh, unconscionable, or oppressive by-laws. What does this actually mean? Gary Bugden gives us his views on that. Paul Keating from Strata Community Insurance covered the issue of strata committee members and their exposure to liability and why it's important to have office bearers' liability insurance. Plenty more in there from the evening as well. What you are about to hear is a short segment from the live podcast where Reena and I covered a couple of topics. One of them was the recovery of unpaid strata levies. How do we go about that? What authority does your strata manager have to kick off that process? How is that process done legally? Reena and I discussed a case which we were both involved in a couple of years ago where we had to untangle a very complicated ledger in order to answer a lot owner's defence when it came to the recovery of unpaid levies.

We then move on to discuss another topic and that's the topic of how owners can increase the value of their investment by using areas of the common property when it comes to their renovations. Extending their lot into otherwise unused areas of the common property. I am being a little bit cheeky and not giving you the whole live podcast episode here. If you do want to hear more, if you want to find out how this episode ends, if you want to hear some audience Q&A and of course if you want to hear from our special guests on the panel, covering more of those topics that I highlighted, as well as receive my update on short-term letting, head over to [ysplive.com](#) and you can get your hands on a video from the evening.

Not just the audio. Yes, the video. You will be able to see us all in the flesh and importantly on that topic of short-term letting, the video actually includes my own update, which I have slotted in there since June 2018, when our government New South Wales announced some reforms in that area. That is a bonus update, which even those who attended YSP live have not seen. If you snap yourself up a copy of the video, you are going to be getting that special update on what's happening in New South Wales when it comes to reforms to the law in relation to short-term letting in our strata schemes.

Head over to [YSPlive.com](#). If you are not quite sure what the video holds and whether it is for you, check out our 2-minute trailer which we've got there on the website. Of course, as always if you are a member of the YSP online community you are going to get a significant discount on the price of this video. Bear in mind you can kick off a membership with us for just \$29 and you will immediately get access to all the members-only resources. That's the by-law templates, the eBooks. Probably the most popular resource is of course the Q&A forum where you can jump in and ask me personally your most pressing strata questions and get my quick answers. That's really where most of the action happens inside our membership. Of course, you are going to get a great discount on this video.



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The video is \$97 if you are not a member. \$77 if you are a member. You can do the Math there on that one and work out the benefits of your \$29 membership. Now that pricing you will see is special limited time only pricing. It's about 35% off the regular sale price. Make sure you jump in and snap that up before those prices go up. CPD points available if you are a strata manager watching this video and you need to claim some points for the CPD year. Just get in touch with me. Let me know you are a manager wanting to claim points once you've purchased the video and I will connect you with Sasha Boe at Real Estate Training Solutions and she'll be able to organise your assessment and your points.

Enjoy this sneak peek inside YSP live as Reena and I give you the inside information on strata levy recovery. The dos and the don'ts. Remember you can find all of the action from the night over at YSPlive.com. Check it out.

All right. Now, Reena Van Aalst is looking for her glasses. You don't need your glasses, Reena. Reena Van Aalst let's record a podcast.

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: Reena is usually wearing her pajamas. [crosstalk 00:07:31]. Sorry.

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. How has your week in strata been?

Reena Van Aalst: It's been quite good actually. I've only had one meeting this week so it's pretty good.

Amanda Farmer: One again.

Reena Van Aalst: Just one again.

Amanda Farmer: One last week.

Reena Van Aalst: I know so it's pretty good. It's only Tuesday so [crosstalk 00:07:58] it's pretty good to Tuesday.

Amanda Farmer: Awesome. Excellent. Well, let's jump straight into it, Reena. What has been your challenge this week?

Reena Van Aalst: Well, I've been asked by some of the owners in our buildings, what is the role of the strata manager in the debt collection process and what authority do they need? Initially, I thought, "Well this is really a no-brainer" in terms of the answer. Then I thought, "*Hang on. Let's go back step-by-step and look at all the instruments by which an agent is appointed and all their delegated duties.*"

The first thing I looked at was the agency agreement. That's obviously between the owners corporation and the managing agent. In the schedule of services, there's always some reference to the agent being able to recover outstanding levy contributions on behalf of the owners corporation. In that delegation, each company may have if they are using the SCA standard agreement, they may say full authority with no limitations, no authority, full authority subject to limitations and Schedule A2, and in regulation Schedule 646 reference, which obviously relates to fees.

For example, in our agency agreement that we had with our owners corporations we don't have full authority. We have authority based on instructions from our owners corporations.

Amanda Farmer: If your owners corporation is asking you to engage in the collection of unpaid levies and you are wondering



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"How do I have the authority to engage in that process?" First step, have a look at your agency agreement.

Reena Van Aalst: That's right. The second thing we also have and most companies would have this is a resolution at their annual general meeting normally which will authorise the managing agent and/or the strata committee to do certain things. That will include issuing arrear notices, reminder notices, recovery of levy contributions, engaging or appointing the services of a debt collection agency, lawyers, or any other representatives on behalf of the owners corporation, issuing demands, commencing, pursuing, continuing to defend court actions. It just goes on, and on, and on.

I just read the first motion and I just said "Everyone, you can just read the rest." It's quite a detailed motion. [Crosstalk 00:10:23] really understand the debt recovery process can become quite complicated and retracted if it goes further. At least there we have all the steps that the agent and the committee can take.

Amanda Farmer: I have to say that's a motion that I see on agendas quite regularly. It seems to be a standard motion that managers have adopted. Some lawyer along the lines has drafted and then we've all cut and paste that into the AGM.

Reena Van Aalst: Yes. It's like A, B, C, D, E, F clauses.

Amanda Farmer: Is it necessary? If you don't have that motion on the agenda that then you can't recover unpaid levies?
Reena Van Aalst: No. I don't believe so but I think it's giving perhaps more certainty so that when the action does commence that the owners corporation has passed a resolution.

The other thing I suppose it does is it broadcasts to owners "*We are serious about unpaid levies and if you don't pay on time we are coming after you because we said so at our general meeting.*"

Reena Van Aalst: Exactly. But beyond that what I've always done as a company practice in the places I've always worked, we issue a letter at 30 days' notice, 60 days' notice, then 90. There's always a fee associated with that just also itemising your agency agreements so that owners are aware. That is normally charged to the lot owner on their accounts. The software does that automatically. You issue a 30-day letter, and it spits out a fee. That goes on the lot account.

I think on 90 days if the levies remain unpaid we always go back to the strata committee and say "Here's the list of owners who are in arrears for 90 days now. What action do you want us to take? Do you want us to go and get legal representation to recover the outstanding levies?"

Now, 95% of the time the committee will say "Yes" and then we get a cost agreement from the lawyer to normally issue a settlement of claim as the first step in the process. Sometimes the owners corporation and the committee may say "No, Reena, because we know this person's mother's died or whatever" and there is some leniency given. Obviously, interest is still accruing at 10%. That doesn't stop and therefore we tell the owner "Okay, the committee has considered ..." If we don't say anything what if they do ring us and complain about the fees that they are being charged. We just say "Well, basically you are pretty lucky because we are not actually pursuing you beyond the 90 days," which is a normal standard time I think for most debt collection matters. I've been involved in quite a few matters where most of the time they just get a statement of claim and there's no defence or there is a defence and the normal legal processes take place. Amanda and I have actually been involved in a case where an owner disputed all the arrears fees and all the legal fees that had been incurred by the owners corporation and what predominantly happens is the agent will get the bill from the lawyer at the time and then just put it on their lot account.

Basically the owner is not just responsible for the levies, there's interest and there's the arrears fees that the agent is charged throughout the debt collection process and there's legal costs. Sometimes the legal costs can be quite high. I think sometimes some lawyers may think "Well the owner is paying and not the owners corporation" and sometimes you don't get the level of detail that perhaps you would if you were pursuing a normal matter in terms of ... and the agents don't send the copy of the bill, which I find is really strange.

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I used to say Estoppel, if you get a statement and you get a fee, but you don't see the supporting documents, wouldn't you if it was your own personal life say "What's this bill for?" When that used to happen it was a practice that the agent should forward a copy of the legal fees that have been incurred by the owners corporation for payment. In this particular case I think Amanda I might just pass on to you.

I was in a meeting of the strata committee and basically, the guy turns up at the meeting and he serves me with all these papers from his lawyer and go to the federal court mind you and we hadn't even seen any of these things. It was to do with some excessive costs that had been charged and I think the court had found that he had been overcharged by the legal firm that the owners corporation had engaged. There were some reductions in photocopying costs, etc., but I think there's something that was more to the point was the owners corporation's ability to actually and the legal expenses to the lot account and I'll pass on to Amanda because she had written a paper about this I think an article.

Amanda Farmer: Both in the previous Act, our 1996 Act and in our 2015 Act it makes quite clear that owners corporations can recover unpaid levies, unpaid contributions, the Act calls it. If they are unpaid after 30 days now under the new Act we then have to issue a 21-day notice as well. Don't forget to do that. You can then proceed either to the tribunal or to the court and you can file a statement of claim. You can claim the unpaid levies together with any interest or expenses.

Now, you can only claim your interest or expenses together with the unpaid levies. Those are really important words together with. What we found had been happening and we discovered this just with Reena's case is one example only. When we looked at the ledger the interest and expenses had been consistently claimed from this owner even in the absence of any levies being due and owing and in the absence of any court proceedings being on foot.

This owner being a little bit more informed than your average owner had picked this up and said *"Well, I kept paying my levies. You allocated those payments to interest and expenses before you allocated them to levies and that put me in arrears and that's why I was in arrears. That's why I was on unfinancial. I also lost my vote because I didn't pay your interest and expenses. When I read the legislation it tells me that I don't have to. The only time that you can really recover interest and expenses is when you are in a court or tribunal and you are recovering them together with unpaid levies."*

Really, I'm going to use the word again, really unsatisfactory drafting of the legislation. If you get a clever owner, and I think we've had another one since Reena, who says "I'm going to pay my levies only the day before you issue that statement of claim." Your interest has racked up and racked up because we have to give them not only 30 days before it becomes overdue, but another 21 days to send a letter. They can get by with never paying their levies on time and you the owners corporation never being able to recover any interest. All the costs of your strata manager sending letters and Reena is just said in her agency agreement it says that she charges for sending those letters or the cost for the lawyer sending the letters of demand and I charge for sending those letters.

The only time you are able to claim your interest and expenses is when you are in court and we do have case law in New South Wales. It's called the Demetria case that came out pursuant to the old Act that established this as law. We were hoping as lawyers that there would be a change in the 2015 Act that would mean that we could recover our interest and expenses properly and put them on the ledger and unfortunately that didn't happen.

My advice to strata managers and this is where Reena mentioned the software, this is where the software comes in, is to record your expenses somewhere other than your ledger. The ledger is not going to be an accurate reflection of what's owing by the lot owner in levies. In the case Reena is talking about it was close to a year of litigation and it was only because of the advice that I had given the owners corporation that really the lot owner was on to something that we ended up being able to settle it on commercial terms. That owners corporation was able to wrap that one up without too much costs.

Reena Van Aalst: That's because you said Amanda, about the software. Most software is designed to basically allocate receipts against the owners at first. That's the problem. Although I think you can manually go in and reallocate, but as Amanda said it's too difficult. You might as well just keep those expenses off the ledger and have them separate to the actually debt levy contribution

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Amanda Farmer: Levy recovery, an important topic to be across as managers and as owners as well. I've certainly had a number of owners approach me with confusion around this issue and important that we get that information out there, Reena.

Reena Van Aalst: Definitely.

Amanda Farmer: All right. I'm going to have a little chat about a win for this week and I've chosen this as a win because I've had a number of people approach me lately with this creative idea. With rising Sydney property prices, we are seeing more and more owners who want to extend their lot into adjacent common property to increase value and they are approaching people like myself and Reena as well I know to say "How do we do this? How do we do this legally? How do we renovate our lot and use perhaps some attic space? Some outdoor space that's adjacent to our lot that nobody else is using? The stairwell space. Maybe even some floor space that is common property, but we want to use it and bring it in as part of our lot so that we can benefit from that." It's something that I have spoken about on the podcast before and it is in within I think the top 5 most popular podcasts. How you can extend into common property and add value to your lot. Two broad ways that you can do it. You can do it by way of ...

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 by 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?