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YSP Podcast Transcript: Episode 124. Accused of having a conflict of interest?

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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. How has your week in strata been?

Reena Van Aalst: Yes, pretty interesting and pretty good. Yes, nothing unusual this week, which is great.

Amanda Farmer: It's unusual to have nothing unusual.

Reena Van Aalst: I know.

Amanda Farmer: Now, I think we should jump straight in this week, Reena, and tell us about your challenge for this week.

Reena Van Aalst: Well, this week I've actually had, in probably the last 6 weeks, 2 occurrences where either a lot owner or a committee member has accused the chairperson and myself having a conflict of interest. And another lot owner accusing another lot owner having a conflict of interest with a contractor.

So when I looked at the issues that were at hand, they were usually because perhaps, in the first case, was that myself and the chairperson disagreed with their point of view. So all of a sudden they've put that in an email. And this is where I think that people should really think what they write because an email forms part of the records of the owners corporation in this case. And I responded to the owner when they had made that accusation. I said to them, "*Our understanding is that a conflict of interest occurs or arises when a private interest comes into conflict with a person who should be fair and unbiased.*" Which is pretty much the essence of what a conflict of interest means.

And I've sent to them in the case, "Can you please explain what the conflict of interest is? And also if there isn't anything to support that, that basically you are making a defamatory allegation which forms part of the owners corporation's records. And normally I sort of caution them and ask them to basically either retract their allegation or provide an apology.

And in a single case matter, you don't probably think twice about it. But now it's happened in 2 different buildings where I think sometimes people think that because the chairperson and the strata manager may share the same view, which is different to the one that they believe in or they hold, which they're most entitled to. I mean, everyone's entitled to provide opinions, constructive criticism. I mean, obviously, that's what an owners corporation is all about. That's what, I think, life is all about in general with either family, friends, colleagues, professional relationships.

But when people make that sort of claim where they say that there's a conflict of interest, I don't think they actually realise, Amanda, what that means, number one. And number two, the ramifications that it holds when actually it's put in an email, put in writing, and forms part of the owners corporation's records.

Amanda Farmer: Yes, I agree with you, Reena. In my experience, when a strata manager perhaps asserts what the law is or requires an owners corporation or a committee or a particular committee member to comply with that law, often when that person doesn't agree that they should be taking those steps, doing those things, then there can be allegations that you're wrong. You're on the side of the chairperson, for example. You just do what they tell you to do.



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And I think it's essential in those situations for managers to be able to point to that part of the law that says, no, I'm directing, requiring, recommending that the building does this because it is required to under this section of the Strata Schemes Management Act. So at all times to be acting with professionalism and to have a basis for, as you say, Reena, sure, they're entitled to have an opinion but when you are a professional service provider that opinion should at all times be disinterested.

Which is not uninterested. Some people do confuse the definitions of those words. But to be at arm's length and unbiased, and be drawn from the facts or the law. And I think as long as you're doing that as a strata manager, you're going to be in a good place to defend yourself from criticisms of conflict of interest.

Reena Van Aalst: In this case, Amanda, the first example that I'm referring to, it was where we had drafted a budget for a building. And basically, we were advocating that the levies had to stay the same. And they had gone up significantly the year before. I think I've spoken about that in a prior podcast, where we had to basically triple the levies.

But they still had to be maintained for all the reasons that we had described. And when we prepare a budget, we do an Excel spreadsheet, we particularise every single expense, how it's been calculated. So it wasn't as if we just basically put figures into the software and just sort of delivered a budget from that means. We actually did an Excel spreadsheet to show exactly how each expense had been calculated.

And because that person, who happened to be the treasurer, mind you, didn't agree with the budget that the chairperson and our office had worked on together, because that person doesn't really take any interest in the building apart from things that unfortunately affect that person, people started to use these words conflict of interest.

So I think, Amanda, I don't mind exactly the law states that you've got to do certain things. That's our role and that's our function. But I think when people start to personalise their criticism in terms of using words like conflict of interest, which I think is a very negative connotation, and I think it can actually cast a very negative aspersion both on the manager and that person involved.

Or another building we had, it was a contractor who was basically accused of this. And I think, again, because that person didn't like that contractor, I think that people need to be careful what they put in writing in emails, because they do form part of the records. And if something ever happens, they can be used against that person if there's ever a claim or, God forbid, any legal action.

Amanda Farmer: Yes, it's just another example of the tough job, I think, that strata managers have, and the range of issues that are thrown at you every day. These kind of personal attacks. A really, really tough gig, as I've said many times and regularly taking my hat off to you guys for having to deal with that in evermore creative ways.

Reena Van Aalst: Thank you, Amanda.

Amanda Farmer: Well, I'm going to jump in and share my quick challenge this week. And it is a quick one. We're back once again talking about the election of committee members and how our strata committee is run, something we talk about regularly on the podcast. Another area that's ripe for some confusion.

And I was asked this question recently about setting the number of members of a committee. So you might determine that your committee will have 3 members. You might determine it will have 7. Up to 9 is our current legislation.

Reena Van Aalst: Yes.

Amanda Farmer: The question that I have been asked is whether it is possible for an owners corporation to change that number at a general meeting later in the year, or is it the case that once the number is set at the AGM then that is the number that we then run with throughout the year.

And that becomes relevant too when we have vacancies, whether we can fill those vacancies and how we calculate the quorum for

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committee meetings. That's something Reena and I jumped into back in Episode 116, if you want to go back and have a listen to that. But this is the more narrow question of can we change that number once it has been set? And my answer to that, as far as I could see, was no. There's no ability for the number of committee members to be changed other than when you get to the AGM everybody has vacated their position and you're electing a new committee. That's the time to set the number.

Reena Van Aalst: Yes, I totally agree with that, Amanda, and I had a recent case where that very particular question had arisen. And, unfortunately, we had obtained legal advice that supported the view that you and I share. And this other lawyer disagreed and advised the owners corporation and the chairperson at the time, who was thinking about whether they should declare that motion out of order, which is what I had asked that chairperson to do based on the reasoning that we've just discussed.

And obviously the owners corporation's lawyer at the time didn't agree with that opinion and stated otherwise. But I think that the number can only be set at the AGM. Otherwise, again, it's a whole thing of changing. And the whole reason for this particular motion being put on was 'cause people didn't like the people that were on the committee, even though they had been validly elected, Amanda, at the AGM.

They didn't want them on the committee in the first place, and then they decided that that would basically change that when they could. And, fortunately, they did not succeed. Which was a good outcome in this case, but it could have gone the other way.

Amanda Farmer: Yes, yes. Interesting, these intricacies in our Act. And it's something that might seem quite clear to you and I, Reena, and perhaps to other lawyers, another lawyer will find arguable. That's part of the beauty, I think, of being a lawyer and being able to take those different sides. And probably the reason why we have so many lawyers.

But I think this particular example, as you say, Reena, this is the reason why we have that restriction on being able to set numbers. Because if you could change those numbers as you go, then the protections that are built into the legislation don't really have any work to do.

Reena Van Aalst: But as you just said, Amanda, about lawyers giving different opinions, I think it does make it really hard for strata managers who obviously are not legally trained and are trying to do their job when, I think, you get people giving different opinions. And I don't think it's a problem with giving a different opinion, but I think sometimes there are certain things that I would assume, and I shouldn't say they're black and white, but I think that are very clear in the legislation. And I wonder sometimes if lawyers just want to support what their clients want them to say, or it's another sort of thing to think about, I think.

Amanda Farmer: Yes. Well, an opinion certainly has to be arguable. As we say, you have to have some basis for that opinion. And the way good lawyers, I think, should be thinking is would this hold up before the Tribunal or a court? If I was going to be arguing this line of reasoning before a member of the Tribunal or before a judge, would I be able to do that well and with good prospects of success?

And if you're just grabbing at straws and trying to find reasons to support and achieve what it is your client wants, with no real argument to back that up, then you're going to find yourself in trouble. So there are some situations where there are good arguments on both sides, and often we see that progress to Tribunal proceedings and we get a decision from the Tribunal that then settles the issue for everybody's benefit. Or we see changes to legislation.

So I do think that where there is an arguable view the other way that should be aired.

Reena Van Aalst: Yes.

Amanda Farmer: Because it means that there is an area that needs to be clarified. And often the best way to do that is through changes to legislation, and we do see that from time to time coming through. Certainly with our old Act, many amendments. And I'm sure those amendments we'll be seeing coming very shortly with what we're still calling our new Act, but we're almost 2 years in now.

Reena Van Aalst: It feels pretty new because we've been practising it for a lesser period than the previous legislation.

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Amanda Farmer: That's right. And we're still ironing out these things and finding the loopholes and the grey areas. So I think it's important to talk about those so that we can tidy them up.

Reena Van Aalst: Definitely.

Amanda Farmer: All right. Well, I think we have a joint win to discuss this week, Reena. And we were both lucky enough to attend the launch of NABERS. N, A, B, E, R, S, that is. The NABERS in residential strata schemes. NABERS is the national rating system that measures the environmental performance of buildings, and it has been in our commercial buildings in Australia for a number of years. And it has just been launched now into our residential strata schemes.

And if you want to find out more about how all of that works, what it is, why it's so exciting, check out episode number 97 where I had a chat to Carlos Flores who works with NABERS. And he was able to very articulately explain to us what NABERS is and why it's going to be a real game-changer for our residential property space. And, Reena, you were present at this launch for a special reason. Do you want to share that with us?

Reena Van Aalst: Yes, so one of the schemes that we manage is the Bauhaus Apartments in Pyrmont. And Gordon Streight, who's been on one of your podcasts, Amanda, previously, has taken so many initiatives in ensuring that the Bauhaus adopts many measures. And they were actually the recipient of one of the initial awards that were provided that night.

So we're actually agents to the Bauhaus at Pyrmont and the building manager there who also works closely with Gordon in implementing the initiatives that have been put into that building where their electricity bill has been reduced by a huge factor. I mean, it's just wonderful to see. So managing agent to the Bauhaus in that effort. The NABERS apartment program also includes efficiencies not just in energy but also water consumption and other energy initiatives.

Amanda Farmer: It's really exciting and it's something that I'd love to get my building involved in in the future. To be involved in that pilot project and to receive that award from Clover Moore, which you did, Reena and Gordon, is a great thing and a testament to the hard work that's being done by people like yourselves. And volunteering, at least on Gordon's part, volunteering and putting their hand up to go that extra mile to improve their building's bottom line really.

And to start seeing the kind of results that he's been seeing and the owners have been seeing at the Bauhaus is excellent and makes us other strata dwellers excited for what we might be able to achieve in our buildings.

Reena Van Aalst: Yes. And if people want to read more about that, they can go to our website and look at our June newsletter, and that has a whole section on that particular piece. And also you can read more about Gordon's initiatives on his own website, which is also a link has been put into the newsletter for that. So if you want to have a read, please go there and have a look.

Amanda Farmer: Yes. Gordon's company is Strata-Worx. I will make sure that there is a link to that newsletter in our show notes, Reena.

Reena Van Aalst: Wonderful. Thanks, Amanda.

Amanda Farmer: Excellent. Well, I know you are preparing for a holiday very shortly. Keep packing those bags, getting those tasks ticked off the list. We should say that even though you're going to be on holidays and then I'll be out of the country for a little while, we'll still be here every week with our podcast episodes.

Reena Van Aalst: That's right.

Amanda Farmer: The wonders of technology. We're not really going anywhere.

Reena Van Aalst: That's right. Which is a good thing, but also it's a bad thing because it just means that people will just never get to stop listening to us, unfortunately?



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Amanda Farmer: No, that's not a bad thing. That's not a bad thing at all.

Reena Van Aalst: We need a holiday from them.

Amanda Farmer: Rather, they need a holiday from us. Do you? Send us an email. Do you need a holiday from Reena and I? No, not at all. All right, Reena. Well, I shall catch you next time. Thank you, as always.

Reena Van Aalst: Okay. Bye, Amanda.

Amanda Farmer: Bye.

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