

Publication Date: 14 August 2018
YSP Podcast Transcript: Episode 125. Your Guide to By-Law Registrations

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Amanda Farmer: Hi, everyone. You're hearing from me straight up this week because I have 2 very important announcements. Now I'm going to give you a hint. The second announcement is bigger than the first, so make sure you are listening carefully. Announcement number 1: I have put together a webinar for you. Now, many of you will already know about this because you are on the YSP email list, and you are always the first to know after our members, of course, what I've got going on for you, but in case you haven't yet heard, Thursday the 30th of August, I will be hosting a webinar. It's called The Peaceful Communities Webinar: How to Use By-laws to Combat Bad Behaviour in Apartments. Now, I know that dealing with bad behaviour is such a hot topic for strata dwellers and strata managers because, whenever I talk about it I get a huge response, and the response has been no less for this webinar.

On the webinar, I'm going to walk you through how you can effectively use by-laws to deal with bad behaviour and restore peace to your community. The webinar is completely free, and it takes place at midday on Thursday the 30th of August. It will run for 1 hour, so you can set that time aside in your diaries now. It'll finish at 1:00 p.m. on the dot. This webinar is for you if you've got a troublemaker in your apartment building if you are frustrated by residents who think they can just start renovating their apartment without any communication with the strata committee or the strata manager. This webinar is for you if you are being driven insane by inconsiderate neighbours who think it's okay to create unreasonable noise or park wherever they like if you have a nonresponsive strata manager and you're ready to take matters into your own hands but you're not quite sure where to start.

This webinar is for you if you feel unsure about legal processes and Tribunal procedure. Now, that includes strata managers who may find that they are being asked more often than before to attend the Tribunal for their clients. The Tribunal, certainly in New South Wales, is strongly encouraging a move away from lawyers attending matters for buildings, so now it's more important than ever that strata managers have a good grasp of what's needed to ensure a successful application when it comes to prosecuting breaches of by-laws.

Now, with my many years of experience practising law in this area, I have helped many buildings and individual owners resolve chronic problems simply by more effectively using the by-laws that they already have in place. With just a little knowledge of the legal tools and processes that you've got available, you can take confident steps towards eliminating the bad behaviour that's preventing you from properly enjoying your home or your investment. On the webinar, I'm going to share those tools and processes with you.

The webinar is midday on Thursday the 30th of August. We'll be finished by 1:00 p.m. How do you reserve your spot? Head over to yspwebinar.com. Now, if there's a few of you out there not quite sure what a webinar is, it's okay. You're not the only ones. I've already had a few ask me. A webinar is just like a seminar, but it's completely online. When you register over at yspwebinar.com, you'll get an email from me confirming your registration and giving you a unique access link. That's what you need to click on just before midday on the 30th of August, and you'll soon be with me online learning how to harness the power of by-laws to restore peace to your strata community.

You'll be able to see me. I won't be able to see you. Don't worry if you're still in your PJs at that time or you're eating lunch at your desk. You can be completely relaxed. You can access the webinar through any platform: your phone, your iPad, your PC. Webinars are wonderful ways to learn, and I'm really excited to be bringing this mode of learning to YSP. I hope we'll have many more webinars into the future, so go to yspwebinar.com to register for the webinar. I know so many of you already have registered, which is awesome. I look forward to seeing you all online on the day learning how to use by-laws to restore peace to your strata community.

Now the second announcement. I told you this is the big one. I'm going to start by taking you back, back to October 2016. That was about 6 months after I started the podcast. In October 2016, I started the YSP online community, the membership. I did that because I recognised that space needed to be created for strata owners, for strata managers to ask the hard questions, the questions that don't necessarily get answered on this podcast, and to have those questions answered quickly, accurately, sensitively by someone who actually has expertise in strata and community titles law.



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I recognised that severely lacking in our sector is a space for owners and managers to get good quality resources at a reasonable price, resources that then assist in the smooth running of a strata building or the positive experience of strata living, resources like by-law templates, a case database, precedent forms, training videos. Having recognised what I thought was a need, I set about building that space, and it turns out my inkling that there was a need turned out to be right. When I opened the membership, many of you jumped in feet first, and you, our YSP members, have been the ones who have made the membership what it is today.

You have filled out that Q&A form with amazing questions, questions that really challenge me and that I'm excited to get to the bottom of for you. You've built a fabulous library of information in that form. You've been open about sharing your challenges. You've shared your own personal experiences that have often occurred at a meeting the night before or at the Tribunal the day before. You are the proof that we are all in this together, and if we recognise that, we share our experiences openly yet in a safe, protected environment if we share our resources, we can all dramatically improve our experience of community living. It's been around about 2 and a half years since I started the membership, and it has been a wild ride. I've seen the membership and my vision for the membership evolve significantly over that time, but as the membership grows, there's a little something nagging at me. I'm reminded that I started this podcast. I built this membership community because I wanted to be of service in a way that I knew could have huge impact. Often, the answer that I can give you in 2 minutes is the difference between you being able to sleep peacefully at night and you being up biting your nails at 3:00 a.m. I know that. I started the membership because I wanted to make that kind of a difference to as many people's lives as possible.

The little something nagging at me is this. A lot of my time and resources, at the moment, go into marketing the membership, into bringing in new members. Time spent doing that is time that is not otherwise spent helping current members solve their strata problems. It's time not otherwise spent developing new members-only content and educational tools. It is time not otherwise spent in service to the people who have placed enough faith in me to commit to a YSP membership and all that it has to offer.

Now, with that weighing on me, I have made a very simple but very big and very important decision. I am closing the doors on the membership indefinitely. From 8:00 p.m. on Sunday the 2nd of September 2018, it will no longer be possible to simply join the YSP online community. The membership will be closed. I say indefinitely because I may open it again at some time in the future, but I don't know when that will be. I have no plans. What I can guarantee is that, if I do open it up again for new members, membership absolutely will not be the same price it is today.

Now, I hoped when I started the membership that members would get the type of benefits that I know they are now getting, including my one-on-one help, and you're about to hear a perfect example of that in this upcoming episode. It makes me really happy. It really fills me up to know that I've been able to change the experience of strata living for our existing members and be the one standing with them during difficult times, but I really want to take that to the next level. To do that, I need the time, the space to focus on who is inside the YSP community and what I can offer them.

If you're already a member, you would have heard from me on this already, and you have nothing to worry about. You're safe and sound inside the membership and, even better, you're locked in at the price you signed up for. If you're not a member, well, if you haven't worked it out by now, it's a very good time to join. In fact, the time for you to join is fast running out. The doors will close on the membership at 8:00 p.m. on Sunday the 2nd of September 2018. They will be closed indefinitely. I do not know when membership will open again. What I do know is that, if it does, you will not be able to get in for \$29, which is the current price for your first month.

If you want to find out more about membership before it closes, head to yourstrataproperty.com.au/membership. That's where you can join the membership at the current price. That page will not exist after the 2nd of September 2018, so I really hope you are not listening to this episode after that date. If you are and you're not a member, sorry. You've probably been redirected to the wait list. The website will tell you all you need to know about the membership. I'm not going to detail all the benefits here now, but just know that, if you're not a member, if you've been thinking about it, if you've been thinking, *"Oh, maybe 1 day in the future when I need Amanda, I'll join,"* well, I'm here to tell you that time is now. Don't miss this last chance.

Well, those are the day's announcements. Time for this week's episode. You're going to hear from a member of the YSP community, Jenny Smith, as I answer her excellent question about the process for registering by-laws in New South Wales. Enjoy



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this very practical, very educational episode and, as always, I'll catch you next time.

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 this is Your Strata Property. I have an episode that is a little bit different for you today. I am lucky enough to be chatting to a member of our YSP online community. I am very shortly going to introduce you to Jenny Smith, who is with me today, but first I want to let you know how Jenny came to be on the podcast. One of the many member-only benefits that our members inside the YSP online community receive is the opportunity to chat with me on the podcast about a specific strata question or a problem that might be causing some concern. Through this process, not only do you get your question answered, but we can also share with our many other listeners the solution to a problem that they too may well be experiencing, so it's just our little way of sharing the YSP love.

Now, Jenny is in a small, self-managed scheme, and she's here today with a question about by-laws and, specifically, the registration process for by-laws, so I'm absolutely delighted to welcome Jenny to the show. Hi, Jenny.

Jenny Smith: Hi, Amanda. Thanks for having me.

Amanda Farmer: Thank you so much for coming on to the show today and bringing us your question, which I'm sure many of our other listeners also have. We're going to get into some kind of technical, maybe, detail around how we can correctly register by-laws, but I want to ask you first, Jenny, to tell us a bit about the stage you're at with your by-law that you're trying to get registered. What is it and, in your own words, what's your particular problem that you need help with today?

Jenny Smith: Okay, so as you mentioned, I came across your exclusive use car parking by-law, and now I have the dilemma of working out how to actually register it. Being just a small, self-managed strata scheme, basically, I'm just looking for some further information on the steps as to how you go about doing that.

Amanda Farmer: Excellent, so there is an area of your common property that you want to use to park your car, and you've used the template that we have available on the YSP site to put together a by-law that allows you to do that. Have you had that by-law considered at a meeting yet?

Jenny Smith: No, not as yet.

Amanda Farmer: Okay, so you have filled in the template. You have got your by-law complete and ready to go. Do you have a meeting coming up? Do you have regular general meetings with your scheme?

Jenny Smith: Yes, we do.

Amanda Farmer: Excellent. Do you have a date for when the next meeting should be occurring?

Jenny Smith: In a couple of weeks' time.

Amanda Farmer: All right, so we need to make sure that your by-law is on the agenda for that meeting, and it needs to be on the agenda before that agenda goes out, which kind of seems a little bit obvious, but some people think that you can send out the notice of meeting and then you can table the by-law or the motion that you want to be considered at the actual meeting, and that's not exactly how it works. We need to make sure that our by-law is on the agenda when it goes out.

Now, the notice period for general meetings under the legislation in New South Wales is 7 clear days, and that doesn't include the date you send the notice and the date of the meeting, so the rule of thumb that we as lawyers and strata managers use if we're sending notices out by post, we generally give ourselves 14 days to send the notice out, and then the meeting should be held not less than 14 days after that. Do you put together the agenda yourself being a self-managed scheme?



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Jenny Smith: Yes, that's right.

Amanda Farmer: Okay, so you're going to put your by-law on the agenda, and you need to frame it in the form of a motion. A motion generally takes the form for a by-law, it's a special resolution, which means that, in order to be successful, not more than 25% vote against the by-law, and that's calculated on a unit entitlement basis. Because it's a special resolution, our motion containing the by-law needs to say these words: that it be resolved by special resolution to make the following by-law. That's a very, very simple motion and, for your purposes, that will be just fine, and then you have the body of the by-law set out on your agenda.

Now, because you are a lot owner proposing this by-law, your motion also needs to contain what we call an explanatory note. It's a short note just at the beginning of the motion. I suggest that it comes before the words that it be specially resolved. You're going to put a short note in there that explains why it is you're proposing the motion and what it means if it's resolved. What I usually say in explanatory notes that I draft for owners is that this is a motion to approve a bylaw that, once registered, will permit the owner of lot two, for example, to have the exclusive use and enjoyment of part of the common property for the purpose of parking their vehicle. That's all you need to say in an explanatory note. It's just telling people who are reading the agenda what the impact of the motion is if they vote in favour of it, but our legislation here in New South Wales does require us to put those explanatory notes in.

You've done your explanatory note. You've done your motion. You've got everything else that needs to go on your agenda, which you'll be used to, and you're sending out that agenda you're holding your meeting. You with me so far, Jenny?

Jenny Smith: I am, yes.

Amanda Farmer: Excellent, so we have the meeting. I'm sure you are familiar with the voting requirements of the general meetings, and I've mentioned there that we need a special resolution to have this by-law approved, which is the case for all by-laws. Let's say you get your by-law approved. Congratulations to you. It's time to register your by-law. A by-law has no effect unless it is registered on the common property title. If it's okay with you, Jenny, what I plan to do is go through the process in a little bit of detail with some reference to some more resources of registering a by-law.

Jenny Smith: Okay.

Amanda Farmer: Before I do that, do you have any experience with registering by-laws before? Is this going to be your first time going through a registration process?

Jenny Smith: No, this is absolutely the first time.

Amanda Farmer: Okay, excellent, so in your scheme, I'm assuming that, perhaps, you have the model by-laws in place, and you've never had any changes to those?

Jenny Smith: Yes, that's right.

Amanda Farmer: Okay, good to know. The very next step after your by-law has been approved at a general meeting, especially resolved, we might say, at a general meeting, my advice to you is to immediately put in your diary the date that is 6 months after that meeting. The importance of that date is this. Under our current law in New South Wales, by-laws expire 6 months after the meeting date unless they are registered within that period, so that's a really important date, and that's the first thing that I do when I receive instructions from a building or a strata manager to register by-laws. I look at the meeting date, and I immediately put that 6-month expiry date in my calendar to make sure that I know it must be registered before that date. I've seen a few bylaws in recent times expire before they're registered, which is really frustrating because it means that the meeting needs to be held again and the by-law-

Jenny Smith: Is that even if you've commenced the process of registration, so for example, it's lodged by the lodgement and the registration occurs after the 6 month period?

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Amanda Farmer: Excellent question. It needs to be lodged for registration within that 6 months, so you're quite right. If you've lodged it and, because of delays at Land Registry Services, they haven't managed to actually physically put in on the title within for about 4 weeks, and the expiry date has come and gone, you will still be safe because you've lodged it, and they will have a record of the lodgement date. That's relevant where, if you have lodged it and you've made a mistake with your forms, and the forms end up coming back to you, your lodgement date will still be preserved, so you'll still have the opportunity to resubmit, and you'll still have that same lodgement date. Your by-law won't expire. Really good question and important that I make that clear.

Bear in mind that, under our old law, we used to have 2 years to register by-laws, so we've had a bit of a mental shift and cultural shift, if you like, in the strata sector, and we're all having to be very conscious that that period is now much, much shorter, that 6 months now.

The next thing you do after you have put that 6-month date in your diary is you grab yourself a Form 15CH. This form is available from the Land Registry Services website, and I am including a link directly to that form in the show notes for this episode, so you can click there and head straight over to the Land Registry Services website and find that PDF interactive form. The form is pretty self-explanatory in terms of filling in your strata plan details, the date of the meeting, and setting out the change that's being made to the by-laws.

In your case, Jenny, for example, if you have model by-laws 1 to 17, and you don't have any other by-laws in place, your new parking exclusive use by-law might be called special by-law number 1. Often, buildings like to call their additional by-laws special by-laws. I'm not quite sure where that convention came from, but I think lawyers have been doing that for buildings, probably, for some years, calling additional or unusual by-laws special by-laws. There is nothing stopping you from calling it by-law number 18 or number 19. Whatever the next number is in the list, you can title your by-law, but you do need to call it something because you need to put that into the form.

Now, the bulk of the work when it comes to completing this form is actually in the documents that you have to attach to the form. Of course, you need to attach a copy of your new by-law, but your new by-law needs to form part of a consolidation. It needs to be added on, if you like, tacked on to a document that contains all of your current by-laws so that what's attached to your Form 15CH is all of the by-laws that apply to the scheme plus your by-law added on to the end. That's what we and Land Registry Services call a consolidation. Since our new law came into effect in November 2016, we have had to lodge all changes of by-laws as part of a consolidation.

Now, this process does get some buildings and some strata managers a little bit confused because I'll get the minutes of a meeting that confirm a by-law, a new by-law that has been made or a by-law that has been amended, and they'll say, "*Amanda, please register this by-law,*" and I'll, say, "*Well, please send me a copy of the consolidated bundle of by-laws so that I can just tack this one onto the end.*" Some buildings simply don't have that or don't know what that means and haven't yet done that process of consolidating their by-laws into one document.

Jenny, if your building hasn't done that yet, it's something that will need to be done. It sounds like it will be a fairly simple process for you because you've got the model by-laws in place, so type all of those out into a Word document and then, in the same document, add your by-law onto the end, and then that is the bundle that is then annexed, attached to the Form 15CH.

Jenny Smith: There's no special format that it needs to be presented in? It's just in clear Word document?

Correct, no special format. I'm going to include in the show notes too the Registrar General's guidelines for how to prepare a consolidation and also how to fill in a Form 15CH. These are pages on the Land Registry Services website, but what you'll see from the guidelines is, basically, that there is no real formal layout for a consolidation. There's simply a statement that the consolidation must incorporate the change that's being made. It must include the by-laws that have already been adopted by the scheme so, for example, the model by-laws. It mustn't include any by-laws that have already been repealed. It must include all by-laws being added. It must have the numbering that has been attributed to the by-laws since their registration. Head over and have a look at that guideline in terms of how to do a consolidation, but we just prepare them in a Word document with a numbered list, so pretty straightforward.



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Once you've done that, you're putting that document behind your Form 15CH, and you're calling it Annexure A, so we're naming the annexure, so at the top of your Word document, it's a good idea to actually write Annexure A to Form 15CH. You're going to have to make sure that your form is signed and sealed by the owners corporation. Your owners corporation has a seal, which you might have, Jenny, being a self-managed scheme. You need to stamp, with the seal, the form in the place that it indicates on the form and also sign. Insert your signature where it asks for that.

In our experience registering by-laws, from time to time, we've been asked by Land Registry Services to also sign and seal the first and last pages of the Annexure. Now, I'm not sure that this is actually stipulated as a requirement on the Land Registry Services website, but we have had documents returned to us where the seal has not been on the first and last page of the annexure, so we've developed a bit of an office procedure where we do ask our strata managers to sign and seal the first and last pages of the annexure or the consolidated bundle just in case because we don't want to have the documents returned to us if we have an officer at LRS who is a bit of a stickler, so we make sure that we sign and seal those pages and also any plans that are attached to the new by-law.

In your case, Jenny, you've got an exclusive use by-law for parking. I imagine there is a plan that shows which part of the common property your parking is to be located?

Jenny Smith: Yes, that's right.

Amanda Farmer: Excellent, so make sure that your common seal is stamped on that plan as well and that that is signed, because we don't want the documents returned for noncompliance with that requirement.

The other thing that's going to be very important with your registration is to make sure you also lodge an approved Form 10, and I'll include a link to this form in the show notes. This is a form that tells Land Registry Services that your initial period has expired. Now, I'm not sure if you're in an old or a new scheme, Jenny, but it's probably very likely almost certain that your initial period has expired, the developer is not in control of the majority of lots anymore, but because you are attempting to register a by-law that gives you rights over the common property, LRS, Land Registry Services, is going to be very concerned to know that the initial period has expired, because you can't register those kinds of by-laws unless the initial period has expired.

They will ask you to lodge an Approved Form 10. Again, it's just a form that is very easy to fill out. You put your strata plan number. You affix the seal and you sign, and you lodge that form together with your Form 15CH, which has your annexed consolidated by-law bundle. It's a separate form. I'll include a link to that in the show notes.

Now you've got your forms together, what you need is the original common property certificate of title. Now, you're probably holding that, Jenny. If you're not a self-managed scheme, then your strata manager should be holding that. You must lodge the original common property certificate of title together with your forms in order for that title to be updated and show your new by-law registered. With your forms, your original title, you can attend Land Registry Services and lodge all of that for registration. The current registration fee, it has actually just gone up at the time that we are recording this, is \$141.60 including GST. You can pay that over the counter at Land Registry Services.

You lodge all your documents. They then go away for, generally, about 2 or 3 weeks, depending on how many by-laws they've got on their list at that time, and they will then reissue just the fresh common property certificate of title, which in the second schedule will now have a notation that a consolidated by-law bundle has been lodged. It won't actually say that the by-laws have been changed. That's what it used to say before we had this consolidation requirement. It will just say that a by-law consolidation has been lodged and if anyone wants to have a look at that then there is a dealing number there where they can order a copy of that bundle and have a look at what all the current by-laws for the scheme are.

Jenny Smith: If you can't get to Land Registry, is there another way around that?

Amanda Farmer: Yes, good question. Frustratingly, for those who don't live close to Sydney, LRS only accepts documents over the counter, so you actually need to turn up in person to lodge your documents. In terms of using an agent, you can contact

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Sydney Legal Agents, and I'll include their website in the show notes for the episode. I suggest give them a ring because I'm not 100% sure if they accept instructions from members of the public, but I have a feeling they might do the one-off. Give them a ring. Have a chat with them. Explain your situation that you're not close to the city, and you've got a by-law registration, very simple, straightforward. They might just want you to pay upfront, so to send a check or they'll give you bank details for their services, which are not at all expensive. Sydney Legal Agents, give them a try, but otherwise, the Land Registry Services, LRS, requirement is that all lodging be done over the counter.

That is your whirlwind guide to the process, Jenny. Have you got any other questions arising from that?

Jenny Smith: Look, I think you've covered it in quite extensive detail, so is there any other pitfalls that maybe you could avoid?
Amanda Farmer: Making sure that you fill out the form very clearly, that the signatures are clear, that the names are clear where you're handwriting. We have, in the past, had requisitions, LRS calls them, questions that they ask about forms that might not quite be clear enough. Make sure that the plan that's attached to your by-law that's showing the area that you're going to have the use of is also very clear. If plans are not clear, then there can be a requisition. In my experience, LRS doesn't like photographs, some people like to, and it makes sense, attach a photograph that shows the work that they're carrying out, for example, if it's a renovation works by-law or the area of property that they're going to be using. Generally, that's not accepted by LRS when they are looking to register by-laws.

I have to say we do have a small team that does attend to these by-law registrations quite frequently, and we do like to consider ourselves relatively experienced, but every now and then, an officer at LRS comes up with something new that we weren't aware of or haven't thought of, so you never know. You can do your best and apply with all of the guidelines that are on the website and the steps that I've outlined, and there may still be something that we haven't thought of that LRS has, so we learn by experience. I think it's wonderful, Jenny, that you are taking this step yourself and that we're able to share with our listeners, other listeners who might be wanting to, looking to take this step themselves without the intervention of a strata manager or a lawyer. Lawyers do do these things, but they charge money, and when you're a small scheme and you're looking to save costs, there's absolutely no reason why you shouldn't be able to carry out this process yourself. Anything that you want to add, Jenny, before we wrap up?

Jenny Smith: No. Thank you so much for all of that information and for your time today.

Amanda Farmer: No problem, my absolute pleasure. If you're interested in checking out, anybody listening, checking out more about the YSP online community and our membership, head over to yourstrataproperty.com.au/membership. Because this has been a bit of a technical episode with some instructions there, you might also want to grab the transcript of the episode, which is always available over on our podcast page. You probably heard me talk about show notes in this episode. All of that's on the podcast page, yourstrataproperty.com.au/podcast, and you'll see this episode listed. You'll get the show notes there and a link to the transcript as well. Thanks so much for your time, Jenny.

Jenny Smith: Thank you.

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

