

Publication Date: 28 August 2018
YSP Podcast Transcript: Episode 127. Beware the outdated financial statement

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Amanda Farmer: Hi everyone, Amanda here. Just before we dive into this episode with Reena Van Aalst as we share our wins and challenges for the week. I wanted to give you one last reminder. This is the last reminder you'll get on the podcast. The doors are closing on the membership. After Sunday, 2nd of September it will no longer be possible to join my online community. The doors will be closed and I do not know when or if I will open them again.

If you've been thinking about joining us inside the Your Strata Property membership or you want to find out more then this is the week to do it. I'm closing the doors on the membership so that I can be hyper-focused on serving members particularly in the Q&A forum as well as developing top quality members' only resources and educational material.

What I can guarantee is that if I do open the doors to new members again it will be absolutely not be at the same price it is today \$29 a month. Those who do signed up at that price before the end of Sunday, the 2nd of September will be locked in at that price for the life of their membership.

Head over to www.yourstrataproperty.com.au/membership to secure your spot on the inside and if you're listening into this before midday on Thursday the 30th of August don't forget my webinar. Midday on Thursday, I'll be teaching you how to use by-laws to combat bad behaviour in apartments.

I'm really excited it's going to be lots of fun, lots of learning too. Register www.yourstrataproperty.com.au/webinar. All right, let's jump into this week's episode. Enjoy and I shall 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 starter tips, go to www.yourstrataproperty.com.au.

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 in strataland. How has your week in strata been?

Reena Van Aalst: Kind of a busy week actually. It's been quite busy, but anyway, that's nothing new for people in strata.

Amanda Farmer: You're still gearing up for this holiday. It's getting closer and closer. I'm looking at you over Skype video, and I can see Lonely Planet Great Britain, Lonely Planet Ireland. Yes?

Reena Van Aalst: That's it.

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Amanda Farmer: You might have time to read those on the plane perhaps, but not before.

Reena Van Aalst: No, definitely not. They're so heavy. I'm going to have to scan some. They're too heavy to take with me.

Amanda Farmer: I love it. Only Reena Van Aalst would scan the relevant pages out of travel books before she goes overseas.

Reena Van Aalst: Thank you.



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Amanda Farmer: Very good tip. I like that. Let's jump straight in. What has been your challenge this week?

Reena Van Aalst: Well, the challenge has been Amanda, is sort of a case I've spoken about previously in relation to community association and approval for works by the committee of that community association. We've spoken about that I think in Episode 118, where we talked about the architectural landscape wins for an owner in NCAT.

Anyway, basically the lawyer acting for the owner who won in NCAT against the community association said that under the Community Land Management Act, the money in the admin fund can only be used for the following purposes, which does not include legal proceedings. That's to maintain association property in good condition, to provide for payment of insurance premiums, and to make other recurrent expenses.

I wanted to ask you, Amanda, based on the legal advice that she'd received, and her question to me about whether or not they could spend money on legal proceedings, obviously an admin fund doesn't, you know, none of those things satisfy that criteria. It's not for association property. It's not for insurance premiums. It's not other recurrent expenses, but I'm not sure how that would preclude. Let's say for example the association wanted to amend their community management statement. They'd obviously have to get a lawyer perhaps to draft an amendment or draft a new clause.

Amanda Farmer: Sure.

Reena Van Aalst: As far as that's different to legal proceedings as such, what are your thoughts on that, Amanda? Is this legal advice correct?

Amanda Farmer: Is there an equivalent in the Community Land Management Act to what we have in the Strata Schemes Management Act that says what amounts may be paid out of-

Reena Van Aalst: No.

Amanda Farmer: Yes.

Reena Van Aalst: Not that I'm aware of.

Amanda Farmer: Because that part of the schedule obviously deals with estimates must be made for the following items, but what we're actually talking about is paying out money from the admin or sinking fund of the community association. I'm just madly looking in the Act at the moment to see if there is an equivalent, and I can't find one.

Reena Van Aalst: No.

Amanda Farmer: The community management statement, the CMS, has that been looked at to see if that deals with how funds may be expended?

Reena Van Aalst: No. It doesn't actually have anything. We have had a look at that, and it makes no reference, Amanda, to anything about that.

Amanda Farmer: Okay. Have a look at Section 105 in the Community Land Management Act. Your question was ringing some bells for me because I have actually looked at this before when it comes to a community association involved in legal proceedings that has been either successful or unsuccessful, which may be a problem in itself, because how do you define those terms? This Section 105 deals with how costs are to be paid and similar to the Strata Schemes Management Act, this Section 105 makes clear that the community association may not levy the successful party to pay its costs of proceedings.

Now, I have grappled with this section previously and in circumstances where there was a cost order made against my client, the community association, and we needed to make sure that that cost order was not met from funds that the successful subsidiary

body had paid into the community fund. If you look at this section, what it requires is that a community association not pay any of its costs and expenses in legal proceedings brought by or against it from funds that have been contributed to by the other party to the proceedings. The difficulty with this section is how do you know whether you're going to be successful or not before you've got a result?

Reena Van Aalst: Is it, Amanda, that once you do have the result that you just have to ... I mean, I don't know how you-
Amanda Farmer: Yes. A credit, yes. That's how we resolve this, because if you read the section on its face, you can't actually pay your lawyers anything until you know whether you've been successful or unsuccessful, because you don't know if you can pay from funds already in the bank, to which the subsidiary body has contributed who you may be in litigation against, or whether you can use that money because they've been unsuccessful. The way that we dealt with it in the situation that I'm thinking, and this is not, I appreciate, you have exactly your example, but we produced a formula if you like where we were able to credit to pay the costs of the subsidiary body, the successful subsidiary body, and add a little bit on the top to cater for the fact that we were actually drawing from funds to which they had contributed. We added an extra small percentage. We were also reimbursing them the amount that they had contributed to their own costs if you think about it that way.

Yes, but in this case, I suppose there's no cost or running. She was successful I think just in winning against the association in terms of stopping the works proceeding. I don't think she got a cost order, which is quite a bit different I suppose than this. But in a way, it's similar, because you have to actually reimburse by some form or preclude that particular lot owner from actually paying anything towards the legal costs.

Amanda Farmer: Yes. That's right. As for which fund it comes from, the legislation just doesn't seem to deal with that. I think this Section 105 seems to assume it's going to come from one of the other. It doesn't really seem to differentiate, save that it says, "*You must make a specific levy for the purpose.*"

Reena Van Aalst: Yes. I mean, the sinking fund has to be, it says painting or repainting, acquiring personal property, replacing personal property, replacing pieces or fittings that form part of the association property and to make other expenses of a capital nature. I suppose by default it has to be the administrative fund, but then again, when you look at the actual legislation and its wording, it doesn't say for any other expenses that may arise out of the running of the association. It just says other recurrent expenses.

Amanda Farmer: That's right.

Reena Van Aalst: Then on the other hand, as you correctly said, Amanda, this Section 105 does say to that person who can't be levied any costs or expenses in proceedings brought by it or against it. Yes. Thank you for that. I knew you'd have the answer.

Amanda Farmer: I don't know if I do, but I've got something. All right. I'm going to jump into my challenge for this week. I'm writing this as a challenge because it has actually been brought to my attention by a couple of different buildings in recent times. Again, something that when we hear enough of it, Reena, we think it's something ripe for discussion and put it out on the podcast, because if it's affecting a couple of people, it's probably affecting more. This relates to financial statements that need to be prepared in the lead up to an annual general meeting.

Now, just a refresher, and you correct me if I'm wrong, Reena, we no longer have to attach our financial statements to the notice of general meeting. Instead, we prepare a statement of key financial information. However, we do still need to prepare financial statements and approve those at an annual general meeting.

Reena Van Aalst: That's correct. I think any prudent manager, Amanda, would still issue the financial statements that have been prepared in audit. I don't know why you'd prepare them and then not send them. There's a few pages of photocopying costs there, but I don't think that's really any plausible reason why you wouldn't.

Amanda Farmer: Yes. I agree with you. That's a very good tip for professionals. What I want to address today is the requirement for the period that these statements must cover. Section 92 in the Strata Schemes Management Act in New South Wales provides

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that that period must end on a date that's not more than 2 months before the date of the annual general meeting at which these statements are going to be considered. Now, I've had a couple of buildings consulting with me recently who have pointed out to me that for example, their financial statements go to the 30th of June, and they're having their AGMs in November. Those statements are therefore out of date and not compliant with Section 92.

Reena Van Aalst: Amanda, previously we used to call these supplementary accounts. The legislation is very similar. I don't know why people aren't doing that. I mean, it was always in the old act.

Amanda Farmer: Yes. Tell me about that, Reena. That's what I wanted to talk about. How do you deal with that in practice, because I have seen supplementary accounts where the AGM for whatever reason has been delayed and the financial statements have been prepared. What is best practice when it comes to financial statements?

Reena Van Aalst: The best practice is and has been and should be that you obviously provide the end of financial year accounts, whether they're ordered to or not, and then you supply if it's more than 2 months since that date, you supply what we call supplementary financials, which start on the first day of the new financial year to date. For example, if we're sending out an agenda- I'll give you an example of one we've just sent out today. It's got a March year end it was audited. There had been delays in terms of the AGM because of a by-law review that's been undertaken.

In any event now, you don't have to have the AGM in any particular time period, as long as you have it once in a year. Therefore there's no sort of noncompliance there. However, we've already issued two levy instalments, because their levy is due in April and 1 July have already been issued. We basically will have the financials from 1 April to today's date. They go out with the agenda. The people have that sort of 3 month, April, May, June.

Amanda Farmer: Yes. I think you hit the nail on the head there, Reena, where you mentioned we no longer have the requirement to hold our annual general meetings at a specific time, as long as there is one in each financial year of a building. The date is no longer as strict as it used to be. I think what's happening is that some managers, some buildings are becoming a little bit lax about when they conduct their AGMs. They are, as a matter of practice, still having their financial statements prepared, because they're going to have that reminder in their diary. It's yearend for this building. Get the financial statements done, but then the AGM is being pushed back and pushed back because of busy diaries. Nobody is checking to make sure that those supplementary accounts are done. Owners are then looking at financials that end in June for a meeting that's happening in November or December. How can you be in any kind of position as an owner to know what's been going on with the building's finances if you don't have up to date accounts?

Reena Van Aalst: Yes. Most especially, Amanda, I mean, I've got - that you and I are aware of where if their financial year is in March and they end up having their AGM last year in November, they're still levies issued, and therefore if I rely on the March financial, and it's over a year away since I've had that meeting. Yes. It can get quite complicated. I think the other managers actually didn't even provide them in the previous legislation when it was still required, so I don't know. I don't think this is a new thing that maybe some owners are finding with their managers, but I think now with this new requirement not to have it at any fixed time, that may be sort of making people sort of forget. I think sometimes it's very hard to find that section. You're talking about 92, Amanda?

Amanda Farmer: Yes.

Reena Van Aalst: I think you've got to sort of look for it. Maybe it's a good time to remind everyone.

Amanda Farmer: That's right. Yes. Have a look at Section 92. I'll put a link to it in the show notes. That defines what the reporting period for the financial statements needs to be. That's where that 2 months before the day of the general meeting date is stipulated. Managers and those self-managed schemes, secretaries who are organising annual general meetings, don't forget about that requirement. All right. Let's shift gears and talk about a win for this week, Reena.

Reena Van Aalst: This is just a pleasant think to talk about, Amanda, which is a presentation that I did 2 days ago, which by the

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time I think this goes to air, it will be probably forgotten in most people's minds. Veronica Morgan from Good Deeds asked me to do a presentation to some of her clients in relation to the expectations of a strata manager and how to get the most out of them. I think she said to me, *"A lot of people don't really know what a strata manager does, and in a sense, what they're paying for,"* and that's one of their sort of most requested topics. I might do that one day for any other organisation, but for owners out there that want to sort of know in a sense what a manager does and what they're supposed to do and how do you know whether or not you're getting what you're paying for and what they are supposed to do, and also Amanda, what's legislated.

There are things that are outside a committee's ability and agent, such as striking levies and things like that that people sometimes don't really know who's responsible for that particular decision. Yeah. Just thought I'd share that with everyone.

Amanda Farmer: Yes. I'm sure that was a very entertaining and engaging presentation, Reena. I'm sorry I missed it, but I did get some feedback from a few little spies who were there that it was wonderful. Very well-received. Now of course, Veronica Morgan, the owner of Good Deeds Property Buyers. She's a buyers' agent, and we've had the pleasure of her company on the show a couple of times now. That would have been, that's her client base there, Reena, so you're talking to investors, people looking to buy into properties.

Reena Van Aalst: Yes.

Amanda Farmer: Did you get any hard questions or did the audience sort of reveal to you any particular issues that they're ...

Reena Van Aalst: A lot of them didn't really know what their manager was supposed to do and how they would find out about it, because a lot of people get varying advice from their managers. They weren't really sure exactly what they were supposed to do and what they weren't supposed to do. Yes. In a sense, I think the agency here, a lot of them didn't realise that it's pretty much all in your agency agreement. I think a lot of managers sometimes get, they're being sort of admonished for not doing this and for not doing that. Like, look at my agency agreement. That's not what I'm supposed to do. I'm happy to do it, but it's not part of our delegated authority.

An example, Amanda, I think that I've had recently was where there's a garage door in a building and it wasn't working. We got a quote from the incumbent contractor who does the maintenance. Then they said, *"All right. We want another quote."* I said, *"Fine,"* so they got another quote, but the other company had put on an override. Therefore, he couldn't see what was wrong with it. *"Why didn't you know it was an override? Why didn't?"* You know? *"They should be told."* I'm thinking, then I thought, *"You know, you need to see our agency agreement engaging, qualified people. It's not knowing how a garage door works."*

Amanda Farmer: Not on the list.

Reena Van Aalst: No, not on the list. Not yet.

Amanda Farmer: Yes. It's quite a relief, I think, as a professional when you can say, *"Not my problem, guys. Not within the scope of my expertise or my engagement."*

Reena Van Aalst: Exactly.

Amanda Farmer: Yes. A good reminder. Well, I'll jump into my win for this week. I have had a question inside our member forum related to tribunal procedure. If you are appearing before the tribunal and you are self-represented, what are my tips for how you can run a smooth, successful case? It was a great question that resulted in some good discussion inside our members-only forum, and I thought I might give a quick summary of some of the points that I discussed.

These tips are relevant to where you might have already had your first appearance before the tribunal, which we call a directions hearing, the very first time your application is being considered by the tribunal. You've been sent away to prepare your evidence. You're coming back for your hearing day. Let's assume that you are the applicant. You're a lot owner who wants the tribunal to make a particular order in your favour. For example, the owners cooperation has to repair and maintain some area of common

property.

If you're the applicant, then you're going to present your case first. I recommend that you be prepared with an opening address for the tribunal which summarises your case, what it is that you want and why you say you think you should get it. When you're talking to the member, and that's the presiding officer sitting in the tribunal room, you're going to refer to that person as Member or Senior Member, and have a look at their nameplate, which will be on their desk. That will tell you whether that person is a member or a senior member.

You don't have to stand up when you speak, unlike in a court room. You're welcome to sit down. Lawyers, in particular, get caught up in this one. We're so used to standing up and sitting down when we're in court that we often go to the tribunal and do the same thing until we get told to just relax. You too can just relax. No need to stand up to address the member.

Be very clear on what orders you're seeking and which sections of the legislation those orders relate to. Now, those should have been clearly set out in your application. If the member is looking at your application form, they should be able to see the orders that are articulated there. It's important to make sure you're very clear about that so that the other side is aware of what you're seeking and can't say that they've been taken by surprise.

One of the first things you should do also is to confirm to the member the list of material that you're going to rely on. You've probably already filed and served this material. You've done it with an index and some page numbers, which the tribunal would have directed you to do so the member can see clearly what you're relying on and be taken to the documents. If you haven't prepared your material that way, make sure you do take the time to do that and take further copies with you on the day. The worst thing that you can do is frustrate a member before you've even started because your material is not in order.

Make sure you've got an exactly copy of what the member has, and that you've also given the same to the other side and you're all looking at the same documents with the same page numbers. It just makes that process of arguing your case easier.

If you've got witnesses, you're then going to outline, give a summary if you like of the evidence that they have already given. If the other side wants to ask questions of the witnesses, then they will ask for the witnesses to be present for cross-examination. That's the time when the other side will ask questions of your witnesses and perhaps the member, if they have some questions also.

Then you're going to make your submissions in support of what you're seeking. You're going to refer to the relevant parts of the law and any cases that you're relying on. Make sure you've got copies of the sections of the legislation and the cases that you want to rely on. It's often helpful to write out your submissions so you can hand up a copy to the member and to the other side before you speak to those submissions.

Then the other side is going to have the opportunity to present their case. Make sure you are listening. Make sure you are taking notes and you're ready to respond to what it is that the other side is putting to the tribunal. That's you're flying tour of some tips when it comes to representing yourself in the tribunal. Reena, have you got anything to add to that? You've been to the tribunal a few times in your luminous career.

Reena Van Aalst: Yes. No, I think, Amanda, you've actually held it quite well. I was there when you were sitting in the queue and there are other cases before you because obviously, the NCAT covers a lot of different areas of law and consumer law. It's interesting to see. The other day I was there and there was someone that was awarded \$300 from their landlord. There's so many different types of cases that you'd be surprised when you're out at the tribunal the types of cases they have to hear. Obviously, as you were saying, Amanda, the people that I think succeed the most are the people that are well-prepared and have all their supporting material and documentation.

I think what I've tried to say to people is that you have to sort of put it in such a way that would they understand your submission, Amanda if they didn't know anything about the matter. Is your accompanying documentation set up in such a way that you are proving your argument by the various either photographs or quotes or reports. In a sense, it's up to you to write a compelling case and to convince that person that the order should be made in your favour.

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Amanda Farmer: Yes, absolutely. Maybe if you've got some time and the case is particularly important to you, maybe there's a bit of money riding on it, you might even go up to the tribunal and watch, as you said, Reena. Watch a few cases and get some tips for good presentation and be a little bit more relaxed, perhaps, about the procedure.

Reena Van Aalst: You can sit down, Amanda, as you said. You don't have to stand up.

Amanda Farmer: You can sit down, yes. You can sit down, but don't wear jeans. Even I don't do that. I'm usually-

Thanks, Reena. Even I get the suit out if I have to go to the tribunal, God forbid. All right. Well, jam-packed episode. Lots of good stuff in there. Don't forget you can get the transcripts for these episodes by heading over to the Your Strata Property website and look at the podcast page and find this week's episode, and click through for the transcript. When we've got these episodes where we talk a lot about legislation and procedure, you might want to go back and have a refresher or share with your fellow committee members, or even your strata manager, what we've been talking about. The transcript is usually a good way to do that. I think that is it from my side, Reena. Anything you'd like to add?

Reena Van Aalst: No. All done. Thank you, Amanda.

Amanda Farmer: Done and dusted. Catch you next time.

Reena Van Aalst: Thanks, Amanda. See you then. Bye.

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

