

Publication Date: 11 September 2018
YSP Podcast Transcript: Episode 129. Why you can't stack the committee ballot paper

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Amanda Farmer: Hello and welcome. I'm Amanda Farmer, and I have with me today the lovely Reena Van Aalst. Hi, Reena.

Reena Van Aalst: Hi, Amanda, how are you?

Amanda Farmer: I'm doing well. Busy as usual as our strata work likes to keep us, under the pump. But that's all good. Better than studying our navels and not knowing what to do when the phone's going to ring. That's for sure. How about you?

Reena Van Aalst: Yes. No, it's been a pretty good week. Busy as usual but nothing unusual. It's been quite nice actually, in terms of the pace. Some weeks don't really have sort of to avoid your deadline, so yes.

Amanda Farmer: That's a good feeling, woo-hoo, enjoy it while you can. Now, let's jump in as we do to our wins and challenges for the week. We're going to start with your challenge this week Reena.

Reena Van Aalst: My challenge for the week Amanda, is about ballot papers, and the completion of these for the election of the strata committee. So, I attended a meeting a couple months ago where I actually was a proxy bearer on behalf of a lot owner. So, it wasn't a scheme that I was managing. And, what happened was, of course, came to the election, the strata committee, there were more nominees than there were places that had been set. And, so, at the time, the renting agent gets up and says to the owners present that evening in the proxy bearers, " *We've given you a ballot form, and please make sure that you only put down 5 names,* " cause at the time, the number was set at 5. And, he said that " *If you have more than 5 names, we'll only take the top 5.* " And I think, oh, that's not right. And, it was good that someone else had gotten up, and said to those present at the meeting, that if you actually put down more than 5, your ballot paper will not be accepted as a vote towards the election of the candidate.

So, I was going to bring to the attention of our listeners, and strata managers, where that comes from. It actually comes from the regulations. It's actually Part 2, Clause 10, so, this is obviously where there's more than one lot, and it says, " *For a vote to be valid, this is Subsection 3, a ballot paper must be signed by the voter, and completed by the voter's writing on it.* " And it says, " *The names of the candidates, without repeating a name for whom the voter decides to vote, the number of names written being no more than the number determined by the owners corporation as the number of members of the strata committee, and,* " as it goes on, " *to set the capacity in which you're exercising your vote, whether you're an owner or a proxy bearer, or a company nominee, or a first mortgagee, and then, if the vote is being cast by proxy, the name and the capacity of the person who gave the proxy.* "

Reena Van Aalst: So, I think some ... many schemes, especially large schemes, may have contentious strata committee ballot, so, I've been involved in very, very many of them. And, I just wanted to remind our managers who are listening, especially to understand that if a ballot paper contains more than the number that's being determined, then that ... then it can't be accepted towards the election process.

Amanda Farmer: Thank you for that reminder, and it's a good one, and, you're right Reena, the election of committee members is an area we talk about a lot on the podcast, we get a lot of questions about, and it is ... can be a contentious area, and an area right for dispute. So, really important for managers, for chairs who are chairing their own meetings, or self-managed schemes where you got the committee, trying to grapple with this procedure, to make sure that you're well across the proper procedure for the election of committee members. So, great reminder there, thank you.

My challenge for this week is a bit of an expansion on what we have discussed a couple of weeks ago, Reena, in Episode 124, where we reminded our listeners of the requirement for financial statements, that are considered at annual general meetings, to be dated not earlier than 2 months before the date of the annual general meeting. This challenge kind of arises I think from that issue

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in that where buildings are holding annual general meetings more than 12 months, and sometimes, significantly more than 12 months after the last annual general meeting. The question arises, what happens with quarterly levies? For example, if at the 2017 annual general meeting, you struck levies for the next 12-month period, until June 2017, if you don't hold your next annual general meeting until December 2017, is the strata manager correct, and legally issuing levy notices for the period June to December 2017, when you haven't actually struck levies for that period, because your last resolution covered only the period up to June. Does that make sense?

Reena Van Aalst: Yes. Well basically, there are 2 things that arise out of that, Amanda. Well, first of all, the manager cannot strike levies beyond the period that the AGM has stipulated, so, therefore, in your example, there'd be no levies struck, you know, from 1 July until November, because unfortunately, there's been no resolution to allow that.

Amanda Farmer: So, the manager can't actually legally issue levy notices?

Reena Van Aalst: No, but what they can do, and what's good practice, and what we've been doing as matter of course, is at the AGM, back in '17, because we can't really hold your meeting, let's say your financial year end is June, as we've discussed, Amanda, so, the next levy is due 1 July, but because you can't have your AGM on 1 July, and you can't have all your financial statements, you know, audited and prepared, so, there should be a resolution allowing the owners corporation to issue levies at a certain rate, for admin fund and capital fund, that's payable until they're redetermined. So, let's say, for example in this case, the AGM is not held till, say September, or even November, there would have been a July levy issued, and then the October levy issued, and then, once you determined your annual levies, let's say, for example, for argument's sake, it's \$200,000 for you admin fund, and you've already issued \$50,000 in the July quarter, and \$50,000 in the October quarter, so, let's say you determine that there only going to be \$950, rather than \$200, and you've only gotta collect \$50,000 over the remaining 6 months, or the rest of that financial year.

So, the problem is that you need to strike ... have levies coming in regularly for cash flow purposes. I think owners find it hard when, you know, that levies haven't been issued for some time, to come up with the money all in one go. And, also, you can't have the levy due before ... okay, for example, July levy can't be due in July if your AGM is in November. So, you've gotta then have that July levy ... that's due one December, then the next one October will have to be due on January, I mean, cash flow wise, it, yes, I mean, unfortunately, I've been hearing many schemes where they haven't had that resolution to keep striking levies, and, you know, sometimes, for various reasons, the AGM is delayed, and then you've got to go back and strike levies, or they haven't ... in one go, we're not in a rush, so do what you have to have one, I said, "*Your levies finished like in May, and I need to get ... strike levies,*" and, so, yes.

Reena Van Aalst: So, we had to like, present, but we had he AGM in March, and the November levy was due on April, and then the next was due, yes, so, it sort of.

Amanda Farmer: One example that came to me recently was in relation to a building where the strata manager had continued to send out levy notices, even though there had been no resolution to have levies for that period, and then, realising perhaps that they had no authority to do so, the manager put a motion on the agenda to retrospectively authorise, I guess, or retrospectively strike those levies, authorise the issue of those levy notices. And, I found out that quite bizarre, and, not legal, in my view.

Reena Van Aalst: Yes, I think for ... accounting purposes, there has to be some record of Amanda, of what has been issued, so that when, you know, if it's being audited, the auditor knows, they check the AGM minutes, and they check the accounts, and they make sure that the levies that have been struck actually marry up with what's been collected, so, I don't know how else, I mean, not maybe it's just been noted, rather than being registered to be approved, because they're already being done, you might have just said that the levy issued out in 1 July just be noted, so that it's just ... it's not actually approving it, it's just saying it's happened, and this is what we've raised in that quarter.

Amanda Farmer: I suppose the best practice, of course, is as you say, Reena, have that motion on your agenda, that levies should continue at the same rate until redetermined, and that's the going to allow the strata manager to issue that additional ...

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should only really be an additional quarter, shouldn't be much more than that before you have your next AGM. I wouldn't be advising schemes to have your AGMs too far into the next year.-

Reena Van Aalst: But it doesn't matter anymore, Amanda, you can, because nothing in the Act tells you you have to have a set time, this is a problem now that we have, because you have this discretion, people now, you know, before, there was much more of a pressure to have your AGM, and so when do we get it by to get this done, we need more quotes with that, we're waiting for, you know, by-law I said, "Okay," well, you know, it's hard to argue, and plus we have that recurring resolution that has allowed us to.

Amanda Farmer: If you have that, great, and also, if, as we discussed in our last episode, if you are preparing supplementary accounts to add to your financial statements, and from what we've been hearing, not everybody is doing that, and that's that problem with leaving your meetings too late. So, yes, interesting topic there around financial statements, and making sure that you have properly struck levies, and, yes, surprising that there are some buildings out there paying levies, receiving levy notices that haven't necessarily been authorised by their general meeting.

Reena Van Aalst: No, I suppose it all sort of goes sort of Amanda, to an issue someone, you know, [crosstalk 00:10:09], has a problem ... Yes, or doesn't like the amount, or-

Amanda Farmer: Yes, exactly.

Reena Van Aalst: The Tribunal and there you go.

Amanda Farmer: All right, let's move on to wins for this week, Reena.

Reena Van Aalst: Well, I've got a scheme where an owner hasn't paid their levies for 18 months, and were notified that there was a new mortgagee that had taken over, and basically, as a result of that, all the strata levies were paid up to date, so, that's a fantastic result. I can't go too much into the case, Amanda, obviously, this has been longstanding case, that we've been involved in. But, it's safe to say that sometimes, you don't realise there is an end in sight, and, you know, we've been obviously, had been issued, didn't, you know, was going to go for default judgement, and then, imagine my ... we had to go to a banker, I mean all the time, and effort and cost that would take, and without that, the owners corporation is missing those funds. And, by just having a new mortgagee that the person had to go to for some obviously personal reasons, we were able to get all the levies paid up to date, which would be now standing for 18 months. It was a lot of planning because we had to strike special levies during the year because we didn't have the cash.

So, therefore, it had a negative impact on a lot of the owners in the building financially, some of them said to me, Reena, you know, I've got a sell I can't afford this, I've used up all my savings, and, you know, it was really unfortunate, because, it's hard to see people in financial difficulty, especially in a smaller scheme, one person not paying can make a big difference to the overall cash flow of all that scheme, especially when, you know, they're involved in some other litigation, and other matters that they didn't, you know, fund, so, it wasn't as if like, they didn't just say, "I'll put this bit of work off, or not do that repair at the moment, while we wait for the cash to come in," and it's, you know, I have orders from council that they had to comply with, there was a number of issues that we're occurring, and so, it was a great outcome, I think, for those owners, it was really good to see.

Amanda Farmer: Yes, yes. It's a good tip when you are involved in protracted debt recovery process for the lot owner, to get the mortgagee involved, and I know you said, Reena, in this case, it was a new mortgagee coming in under a refinance, I guess. But, it is under most mortgage terms, a breach of the terms of the mortgage if the levies are not paid.

Reena Van Aalst: How you said that, Amanda, because I have this ... I might have talked about it in another episode, but the same thing has happened, and I've had to bring this to the attention of the lawyer, you know, I've got a copy of the actual CT of the lot owner, there's a ... there's a mortgage on it, and, you know, she hasn't paid levies for like, you know, years and years, and unfortunately, it's a very ... matter that's being many many years before we inherited the scheme, but, unfortunately, yes, I'm glad that you raised that, Amanda, cause a lot of lawyers don't seem to ... seem to raise that with us.

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Amanda Farmer: Yes, and maybe it's caused when we do reach out to banks, they're not always all that ... interested, or ... wanting to get involved in that kind of situation, but, I have certainly been in cases before, it might have been one of your buildings, Reena, where we did get the bank involved, and they were able to assist in forcing the sale of the property, which then ended up getting a significant debt paid. It is, as you said, Reena, it is a matter of public record, whether someone has a mortgage registered on their title, or not, you can obtain a copy of the title from Land Registry Services, and have a look. And, you can then also obtain a copy of the mortgage terms, and albeit, they are ... they're quite standard, and you don't always get too much juicy information in those, but you can find that term that does require all debts to be paid in respect of strata levies being one of those. And, some, more importantly, find out who the mortgagee is, and communicate the situation to them, and you never know, this person might have other debts, might be in default on their mortgage repayments, and this might just be the straw that breaks the camel's back, and you might get a helping hand there from a large institution who can help you solve what is a big problem for a small building.

Reena Van Aalst: Yes, thank you, Amanda, yes, it's really good advice, actually.

Amanda Farmer: No problem. Moving on to my win for this week, this is a quick one, but, I thought it was a clever one, I had a building approach me recently, and ask if I could draft a by-law for them, which made clear that they have a notice board in place.

This is quite a standard by-law that buildings have to allow them to put notices of meetings, and minutes of meetings up on their notice board. And, the building specifically said, "Look, Amanda, we're actually investing in an electronic notice board. Is there anything in the Act that would stop us from having an electronic notice board?" I had a look, I said no, there is no definition of notice board, there is no requirement that it be ... what's ... I want to say analog and analog.

Reena Van Aalst: A sort of solid structure with a frame.

Amanda Farmer: Yes, yes. Yes, that is not in the Act. You can have your T.V. installed, or iPad or I don't know how you want to do it, but an electronic noticeboard, I'm sure there's plenty of products out there, and businesses who develop these things, and if you have a prestigious building, or just a modern building with a very nice foyer, or entryway, and you want to have this electronic notice board, I think it's a great idea, and you can definitely have a by-law, that caters for that.

Reena Van Aalst: Yes, well I have a building, Amanda that actually uses a building management software to communicate with the residents about certain things, and suppose that's outside the building managers, they could use, I suppose, or that she have, instead of like you having to lift, in a commercial, that they got this nice sort of screen that tells you the weather, and the newest restaurant that you might want to add your strata minutes in there as well. But, maybe not if you don't want everyone to see it, I don't know.

Amanda Farmer: Yes, well, each to their own, but I loved the creativity in that idea and I thought that I would share that with our loyal listeners. I think that's it from me this week, Reena. Anything else?

Reena Van Aalst: No, all good, Amanda. Thank you.

Amanda Farmer: Good luck as you launch out into yet another week in strata, I look forward to hearing about it.

Reena Van Aalst: Thank you, Amanda. Bye.

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