

Publication Date: 25 September 2018
**YSP Podcast Transcript: Episode 131. Can Renovation Works Proceed before a By
Law is Approved and Registered?**

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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: Doing very well, thank you. How has your week in strata been?

Reena Van Aalst: Yes, pretty good! Had a good week actually, nothing unusual to report, so-

Amanda Farmer: Nothing exploded, nothing blew up?

Reena Van Aalst: Nothing blew up, nothing unusual, out of the ordinary has happened this week.

Amanda Farmer: Good, good to hear. We can jump straight into your challenge for this week Reena.

Reena Van Aalst: Well this is definitely a first for me, Amanda. So, we had a scheme that we took over, and we still didn't have the financial records at the time. We were provided with dribs and drabs of it over a period of over a month or two, actually, over 2 months we were getting bit and pieces.

And, anyway, so we got the orders' financial statement for the period ending March, which is their financial year end. But this particular owner was selling and she wanted a Section 184 certificate, the lawyer did, and of course, we didn't have the current financials because there had been payments made from 1 April till when we got the check on 1 May.

And we were following up and writing and emailing the previous manager, to no avail, and at the last minute he sent us the information and didn't send everything, so we had to ask again. So anyway, that's probably a topic for another podcast. So anyway, the owner rang me and said to me, 'Reena, will I have to delay my settlement?'. I said 'I don't think so, I'm still waiting for one more thing and hopefully once we get that we'll be able to issue it.'

So we did issue it to her and the lawyer at the same time. Then I receive an email from the lawyer, who didn't do very much, who didn't do much, we sort of asked him, he was involved in a couple of emails just saying 'Where is it, where is it?' And then we'd respond and send emails to the previous managing agent, we'd just send him a copy so that he knew where we were up to. And the owner had asked us specifically, 'Don't just email me Reena, please email my lawyer at the same time.' I said 'Sure, no problem at all.'

So we were keeping them abreast of what was going on. So the settlement's obviously happened, I received a check for the settlement, I received the Section 22 notice to update the new owner's details. And then I receive an email from the lawyer saying, 'Well, because you provided this certificate late and because of the extra work that I had to do, here's a \$2000 bill.' He said, 'That's between you and the other strata management company to work out. You're going to say it was their fault, but'.

So anyway, I thought let me just read Section 184 and what it says, because, in a sense, you know what the certificate has to include, but I wasn't really sure of any, what the penalties were for not sending it by a certain time period. So, it does say Amanda, that under Section 184 that 'The certificate must be provided no later than 14 days after receipt of an application for the certificate, and the maximum penalty is 5 penalty units'.

So, I recall the penalty and it's \$110, so the maximum is 550, but obviously, there was no delay in the settlement because of the

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owner had asked me and she didn't have to do that because we did get it just in time for the settlement. And, I was wondering Amanda, what right does a lawyer have to send a bill to an owners corporation, asking for money to be paid because he had to do a bit of extra work apparently, well he didn't say a bit. There's no explanation of how this figure was calculated by the way.

Reena Van Aalst: Anyway, and I had gone to the website of this particular lawyer previously Amanda, and they're actually one of these sorts of mobile conveyancing lawyers. There's no address on the website, just these telephone numbers, and funnily enough it says that it's fixed price conveyancing, doesn't matter what happens, no matter what happens, no matter what, I love this 'no matter what', the price will not change! That's just a bit of a side issue, but anyway, I was wondering if you've ever had that ever happen to you before?

Amanda Farmer: No, to answer your question, what right does a lawyer have to invoice the owners corporation in that situation, no right is my short answer. What I suppose the lawyer was trying to do was say, 'Well because of the lateness of the Section 184 certificate, we have suffered some kind of loss.'

And when I say 'we', I don't know if that's the lawyer or that's the lawyer's client. 'We've suffered some kind of loss and we think you, the strata manager or the owners corporation are responsible for that loss and so you should pay us some money.' It sounds like that hasn't been articulated at all, or very successfully-

Reena Van Aalst: No, well it hasn't. The point is the settlement wasn't delayed, so I don't know, it wasn't as if the owner lost money or the other side had to pay anything extra because they had moved out or, I mean, it could have been very dire consequences.

Amanda Farmer: So the perfect response in that situation is to reply, if you reply at all and of course you don't have to, unless you want to just be polite and say 'received', and say 'Please explain with reference to relevant law, what legal basis you have for demanding this payment from, whether it's you, Strata Central or whether it's the owners corporation-

Reena Van Aalst: Oh, no it's the owners corporation.

Amanda Farmer: From the owners corporation? Please explain. It's not going to be that easy mate'. To get money out of us. And perhaps forwarding that correspondence where you were communicating with the owner and they said that the matter had settled on time and without too much fuss.

Reena Van Aalst: Yes, and also the only thing he knew was just, I've got a couple of emails. There was nothing that was really, we were keeping him informed as she had requested. I mean really, she could have done that herself but doesn't really matter. In a sense, I understood her anguish and her frustration in this situation that she found herself in, but unfortunately, I just think, does he have to go to the tribunal? I mean, if it says maximum 5 penalty points, Amanda-

Amanda Farmer: Oh, that's a good point. Yes, you're right, those penalty units can only be imposed by the tribunal. That's not something that a private person can pursue. Yes, bad luck buddy.

Reena Van Aalst: Exactly.

Amanda Farmer: Such is the fixed price model.

Reena Van Aalst: Yes, I mean he doesn't know that I looked at his website but I was actually quite amused. I was going to email and say, but no matter what, you said you don't charge any extras.

Amanda Farmer: You would, you would. Doesn't know what's hit him.

Reena Van Aalst: Anyway.



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Amanda Farmer: Wrong strata manager today.

Reena Van Aalst: Yes exactly, and I wasn't in the mood either.

Amanda Farmer: Yes, well, if there's any developments on that one do let us know.

Reena Van Aalst: Yes, I'll keep you posted actually.

Amanda Farmer: My challenge for this week relates to by-laws and a very interesting question, which has come up a few times. I'm sure you've had it too Reena;

'Should a lot owner be allowed to proceed with their renovation work before the by-law is resolved, especially resolved in a meeting, and before the by-law is registered?'

Amanda Farmer: Something I get asked a lot, you get this one Reena?

Reena Van Aalst: Yes exactly, Amanda. Especially the registration aspect of the by-law.

Amanda Farmer: Because we do, of course it takes some weeks often, to convene a general meeting at which by-laws need to be specially resolved and then it can take a few more weeks after that before the by-law is actually registered. Once the forms are filled in and we've sent them off to land registry services. And our Act is very clear, that a by-law has no force or effect until it is registered.

I get asked this question a lot by lot owners, as well as committees who are saying, look we really want to help this person out, they're lovely, we know that they're going to do everything above board, can we tell them that they can go ahead even though we're not going to have our meeting for another couple of months.

I of course, recite that part of the Act that says, by-law not valid until registered, and if the owners corporation does allow this work to proceed it is doing so at its own risk and it will not be able to enforce any of the terms of the by-law while it's not registered, because the by-law has no effect. So, the strict legal approach is no, that the owner shouldn't be allowed to proceed.

However, one practical way to deal with an owner who really wants to go ahead and the committee is very, very comfortable that, not only that the by-law is going to go through but that there are not gonna be any problems with the renovation, is to ask the owner to give an undertaking in writing that the owner will comply with the terms of the by-law during the course of their work, even though that by-law is not registered.

That is, goes one step towards protecting the owners corporation, it's not a very big step but it's something. But the owners corporation does need to be conscious I suppose Reena, of the fact that the by-law might not get passed at the meeting.

Reena Van Aalst: Yes, that's what I, I mean, we never allow people to do work unless the by-law has been passed at least, Amanda. And I think registration is a separate matter, I think most committees are okay with that aspect, sort of, not being undertaken at the time of renovation.

Amanda Farmer: Yes.

Reena Van Aalst: But, the problem is that a lot of people, we find that you give them an inch and they take a kilometre. Once you've let them do it and that, and you haven't had the by-law yet presented, or even passed, then to me the undertaking is going to be something that you'll have to enforce. And then I suppose it all gets a bit messy, because in a sense the owners corporation had no authority to allow it in the first place. So then how do you say, well we had an undertaking, when really the committee doesn't have that authority in the first place, to allow that to happen.

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Reena Van Aalst: So, I don't really, I've always advised people, no they can't do anything until the by-law has been approved. Because you're right Amanda, it might go to the meeting and who knows. I mean, maybe there's been a similar situation and the person hasn't complied, and then, not with that person in particular but there have been some reasons why the by-law may not be passed, it may not be in the favour of the owners corporation at all and it might just be all, the owners sort of bias towards their rights and not the owners corporation having any rights at all, so.

Yes, my view is a little bit different I think in terms of, because I think I've been involved in too many things that have gone wrong, even when they've had approval and they just do something totally different!

Amanda Farmer: Yes, I have the luxury I suppose of not having to then deal with the building on a day to day basis, but indeed, if works commence and the by-law hasn't even gone to the meeting and is not resolved, it's very hard to put the milk back in the bottle and to say, well that owner now has to undo the work they've done. They have to reinstate the common property. I think what happens in practices that other owners feel pressured to approve the by-law-

Reena Van Aalst: Yes, there's big pressure. Especially when people, Amanda, are moving in. Like let's say they've sold and they're moving in and they want to renovate.

I mean I had one example where this owner was doing the same thing, she had moved, she wanted to renovate the apartment, so we held the AGM quite quickly, she had the by-law. And then there was an amendment that was put by the owners at the meeting which the owners accepted, that the windows had to be of a certain type because from the outside to achieve uniformity, there had to be a distance between the bottom and the top for this long sort of, angled window.

Anyway, of course when the work was done, that didn't happen, and the owner said, oh well, I told my builder and he didn't do it. So anyway, we got it resolved, but the point is, how did we allow her to do that in the first place, without the by-law? And I think that it was going to be much harder to get her to actually fix it than when the by-law had been passed, and registered and everything, like you've said, Amanda.

Amanda Farmer: And maybe this comes back to owners, and perhaps new owners, moving into strata, buying into strata for the first time. Being aware that if they do want to carry out works at the property, and if they are significant works, then a by-law is necessary, a by-law takes time,

a) to put together, b) to get before a general meeting, and then, c) to be registered, and to factor in that time. Perhaps you bought an investment and you want to get a tenant in there quick smart, but you want to do the reno first, that's often a big pressure. To bear that into your calculations when you're looking at how you're going to facilitate your loan and improve on your investment. Make sure you're aware that it's gonna take some weeks to get things through that process of the owners corporation approval.

And, I think if the expectation is not there, that things can just happen quickly, then you end up with more relaxed owners, more relaxed committee and strata manager and lawyer perhaps, and things can flow a little bit more smoothly. So, we come back to that issue of education and people understanding what it is to live in and renovate strata.

Reena Van Aalst: Yes, and if you want to renovate quickly, just go buy a house.

Amanda Farmer: That's right! Well, even then-

Reena Van Aalst: Then you can do whatever you want, no one can stop you-

Amanda Farmer: That's right, to an extent, indeed.

All right, now I think this week Reena we have a joint win which we have recently shared. Do you want to kick that one off?

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Reena Van Aalst: Yes, so Amanda and I, just by coincidence happened to be looking after the same building that I took management over just recently, and there was a damages claim that had been submitted by an owner because her apartment had suffered very significant water damage.

And as a result she wasn't able to rent the property out, she had incurred expenses in terms of travel because she didn't live in Sydney. And so, when we received it, it was sort of like in that very critical stage, and it was lucky that Amanda happened to be the lawyer acting for the owners corporation, and I'll pass now on to you Amanda-

Amanda Farmer: Yes, so this was a building that I had been working with for a little while before Reena came on board, and I actually was very pleased to hear that Reena was coming on board, and it had reached the stage unfortunately where the lot owner had commenced proceedings in the local court, seeking an amount of money from the owners corporation.

And, we're chalking this up to a win because both sides agreed to set aside half a day to have a roundtable conference to discuss these issues, we had lawyers present, committee members and of course the lot owner in question who was making the claim. We didn't have a private mediator, we thought we'd give it a try and see if we could settle it ourselves.

And, we spent a good few hours discussing the merits of the claim, the reasons why we thought maybe the lot owner was asking for a bit more than she would ultimately get in court, what the benefits were to settling without having to go through the court process.

And we ended up, each side, agreeing on a figure that they could live with, that the owners corporation would pay to the lot owner in settlement of her damages claim. We were able to wrap that up without the need for any more litigation and enter into a deed of release, money paid, owners corporation released, and everybody off and focusing on other, more exciting things. So, a win for that building, I know that committee was happy to have that out of their hair, and not an unusual way, at least in my experience, it's the way I like to run cases, to resolve these kinds of matters.

I think where the common property hasn't been repaired and maintained, perhaps as promptly as it should have been, and an owners corporation and a lot owner has suffered loss, then it's usually a pretty clear-cut case that there should be some money heading that lot owner's way, and a good idea to settle that before too much money is spent on legal fees.

Reena Van Aalst: Yes, so it was a good outcome Amanda, but I think we need to add a little bit more information, as the committee wasn't really aware of the extent of the damage.

Reena Van Aalst: It had not been communicated by their managing agent, so that's obviously been updated in a separate issue, but I think that unfortunately when owners corporations aren't aware of what's going on because the owner is communicating with the agent and that's not being passed on, then, unfortunately, this is the cost that you pay, when you don't have a good strata manager unfortunately.

Amanda Farmer: Yes, there was a bit of a communication breakdown there. And where you're dealing with water penetration and continuing damage, these things do need to be dealt with quickly. And that lot owner's claim was racking up week by week because it was an investment property, it was a loss of claim.

And you're right, when I went to look at the records there seemed to be a problem at the strata manager's end, where communications just weren't passed on, and the committee, you know, we've all got other things to do, jobs, lives, we don't always have our head in what's happening within our strata scheme, and we do really rely heavily on our good strata managers to keep us up to date and make sure that important items are flagged, as such, and we're told, you need to deal with this urgently because this is the potential consequence. So a good reminder for the managers too-

Reena Van Aalst: Yes. Yes, definitely Amanda.

Amanda Farmer: All right, well, I think that might be about it for today. Time to wrap up for another week.



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Reena Van Aalst: Yes, sounds wonderful Amanda.

Amanda Farmer: Enjoy the rest of your week Reena-

Reena Van Aalst: I will.

Amanda Farmer: And I'll catch you next time.

Reena Van Aalst: Bye Amanda.

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