

Publication Date: 9 January 2019

YSP Podcast Transcript: Episode 145. How to replace an underperforming strata manager with an administrator

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

Reena Van Aalst: Hi, Amanda. How are you?

Amanda Farmer: I am good. Happy 2019. Woo hoo.

Reena Van Aalst: I know. Happy New Year! We're all back again, back into the groove.

Amanda Farmer: We are back, back into the swing of things. I think this is the week that most offices are reopening for the New Year, gearing back up. Maybe some lucky few are still on holidays, enjoying the fun in the sun, recovering from New Year.

Reena Van Aalst: I think some of my owners actually, Amanda, that ... like they work sort of through the break and then they work the first week and then take the second week off. So I think what you find is that as each week in January goes by, it gets busier and busier. Then after Australia Day, it's all back on point and all, as they say.

Amanda Farmer: Yes. A lot of people, I find these days, take time off for school holidays, too, which is great. My little boy is starting school this year, which is very exciting.

Reena Van Aalst: Oh, wonderful.

Amanda Farmer: We're gearing up for that. So I'll be one of those parents who are, I like to say, looking forward to school holidays. I know some parents say they dread the school holidays. But I want to be the one that looks forward to the.

Reena Van Aalst: Well, Amanda, I think wait till the school holidays come, and then I'll ask you then.

Amanda Farmer: Okay. All right. I'll remember that. We got a date. Okay. I know it's only the first week back, but I'm sure you've got a challenge for us, Reena. What's been challenging you?

Reena Van Aalst: Yes, this challenge actually came in the tail end of last year, so I wasn't able to deal with it at the time. But the question arose where an owner rang me, there was some number of issues in this building. It's a large building, defect, et cetera, and obviously the committee is not taking the relevant action in the view of this owner. She asked me if I would be able to consent to an appointment under Section 237 to be a compulsory manager, which I said, once I looked at the stuff, I said I'd be happy to do.

But then I asked her, "Well, who's the current agent, and what is the term remaining on their contract?" She sent me the agency agreement, and basically they got another 2 years to go on their agency agreement. I said to her, "Well, I'm not really sure how this works, because obviously, there's a contract between the owners corporation and that strata manager. I know that you don't want me to fulfill the functions necessarily, in terms of like issuing levies and all that statutory stuff," Amanda. But I don't really know how it works, whether or not an agent can be appointed to deal with certain things. And I have had that appointment where I was just appointment at one stage to deal with a supreme court matter for a particular building. But then a month later, I was then appointed to look after all the functions under Section 237. So have you come across any, this sort of scenario before, Amanda, this question?

Amanda Farmer: I can't put my finger on any particular decision of the Tribunal that deals with it, but I have certainly had buildings



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who have come to me, lot owners. I should be more specific. Lot owners who have come to me in a situation where they say their owners corporation is not functioning satisfactorily, which, if you can remember, is the test under Section 237 for a compulsory appointment. The owners corporation is not functioning satisfactorily even though they have a strata manager.

The strata manager is not doing their job, or not complying with the legislation, not sending out notices of meeting, not raising enough money, and the strata committee is plotting along, just doing what this strata manager is advising or just assuming that the strata manager is doing the right thing. That definitely happens.

Reena Van Aalst: But what in the case, Amanda, this is a bit different, because this is actually is where the owners corporation, the committee is not complying it. The manager's basically undertaking instruction. The committee's not taking action where it needs to. So it's not the strata manager who's actually at fault here. So they're not doing the wrong thing. They're just doing what they've been asked to do, which is basically nothing.

Amanda Farmer: Yes. Very good point, and 2 solutions here. What I have seen work well in the past in that situation where the owner in particular is happy with the strata manager but not happy with the committee is to ask that strata manager to consent to a compulsory appointment. That actual manager then says, "Look, I agree. The strata committee is out of control, not taking my advice, not doing what they're supposed to do. Here, I'm submitting a proposal to act under compulsory appointment, and I want to be appointed as the compulsory agent." I have actually seen that work well.

If that's not the case and they want to, for whatever reason, get rid of their strata manager, then my understanding would be that you will be seeking 2 orders from the Tribunal. You have to seek an order that the management agreement be terminated.

Reena Van Aalst: Okay, then you have to then, Amanda no matter what while you stole the grounds like the breach is [crosstalk].

Amanda Farmer: Yes, so there's a breach of a contract. So their are obliged obviously under their contract to act in accordance of the law.

Reena Van Aalst: Well, there is now a section of the Act and I moved it up, I just refer to it everyday. Section 72 strata managing agent and building manager agreements maybe varied or terminated by the Tribunal.

Amanda Farmer: This is a new section I think. It wasn't in the 96' Act wasn't it?

Reena Van Aalst: No, it's new.

Amanda Farmer: So that's why we haven't seen any cases on this as far as I'm aware. What I'll be doing in that situation where we are not happy with the strata manager, we are not happy with the strata committee, we do have to prove that the building, the owners corporation is dysfunctional and we will be seeking an order in this Section 72 that the agreement be terminated and an order under Section 237 that a new strata manager be appointed with all the powers of the owners corporation.

Reena Van Aalst: Yes. That's very good idea because if you look at Subsection 3, it talks about the Tribunal may make an order under this section on any of the following grounds, and one of them is that the agent has refused or failed to perform the agreement, or has performed it unsatisfactorily, et cetera.

Amanda Farmer: Yes. Excellent. Really handy section there. I'll be interested to see some cases come out of the Tribunal that apply that. That would be good to watch. Okay. I hope that answers your question. [crosstalk 00:05:23]

Reena Van Aalst: Yes. It does, actually. Yes. [crosstalk 00:05:25] give them some advice to that owner about how to have that agent removed, as well as having a compulsory appointment application submitted. I always tell owners to always have a law to do these, Amanda, because you've got to basically prove breaches of the act and breaches of, in this case, the contract for the agent where they haven't performed. It's not something that usually a lay person knows how to sort of put in words, because when a

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tribunal member is looking at your application, it's got to basically meet breaches of the act, and then you've got to demonstrate how that's occurred.

Amanda Farmer: Yes. They are tough applications to prove, except in the most obviously extreme of circumstances. Those orders don't get made too often. Yes, good to get some help with that.

Reena Van Aalst: Yes.

Amanda Farmer: Well, my challenge this week also relates to strata managers. I'm talking about our commissions. I was recently involved in a situation where a building was proposing the appointment of a new managing agent. Their AGM was coming up. Their current managing agent was also on the agenda for a reappointment. It just so happened that a few days before the AGM, the insurance for the building was coming up for renewal. The committee had asked me, "Amanda, what happens with the commission on the insurance renewal? Usually that would go to our current managing agent. But if we appoint a new agent just a few days later to manage our building, they're the ones who are going to be doing the work for the next 12 months. Why aren't they getting the commission? How do we resolve this?"

I put a phone call through to the broker, and spoke to them on behalf of the committee about how this all works, and they said, "Well, whoever places the policy for renewal gets the commission unless we're told not to pay that commission, or to pay it somewhere else, and it's only the agent who can tell us that." I want to ask you, Reena, what your thoughts are on this. Who should really be getting this commission? Perhaps that comes back to what is the commission for. And if we are in this situation, how do we make sure that the person who is going to be the strata manager, going to be doing the work actually gets the commission?

Reena Van Aalst: Basically in most agency agreements, Amanda, the commission is part of the management fee because it's basically taken on the fact that work has to be done for insurance claims. There's usually a provision for it an insurance to be undertaken for a fixed period of time, perhaps. Therefore, that commission really is in advance, so for work to be done in advance. That also applies to the broker as well. When brokers also get commission, and broker fees. That also applies to them. It's that they actually are undertaking insurance claims and answering questions and undertaking those functions.

I think the agent really should be the one to say, "Well, I've now been terminated. Therefore, please renew this policy, but the commission should not come to me." Then I think that if agents don't do that, then they're only putting themselves in a very bad light because if you're saying to your client that part of our remuneration involves a commission in the future in doing work, then how do you justify asking for that commission when you know that you're being terminated and you won't be doing any further work?

I think in a sense, it does put the whole stance of commissions and their receipt by managers in a very unfavourable light when that occurs, Amanda, I think for clients because really it's always best to end with a good note with people. I just don't understand why for ... I'm going to have 8 gives of a couple of thousand dollars, or whatever the amount is, or ...

It's not really worth ruining your reputation in the market place because those committee members will probably tell someone else and tell someone else. But why a couple of grand? I mean, they might feel hard done by perhaps that manager and they might feel they've done a great job, and they've been unfairly terminated, but I mean, that's life. That's business. Our perception of what is good service would differ amongst different people with different expectations. I just think it's really an unsavoury topic to really have managers try and take a commission for a policy in the future that they know they're not going to be doing anything for.

Amanda Farmer: Yes. I agree with you. The tricky part in this situation was that the policy was coming up for renewal before the meeting at which the strata manager may or may not have been reappointed, so there were some uncertainty there. But my understanding with insurance policies is that you can hold over for a short period or get a cover note for a month, or something like that. I'm not sure.

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Reena Van Aalst: Yes. If you're staying with the same insurer, then they will hold a cover, because they know that it's been approved, and it's just a matter of paying the premium.

Amanda Farmer: Yes. That's often a good option, too, if you're not sure in that period who your manager's going to be so where the commissions should go. Just check with your insurer if you can hold over for a month, and then make sure the right person gets the commission when the policy's placed.

Reena Van Aalst: But Amanda, just to answer another question, Amanda, on that particular example, the reappointment of that managing agent, was that motion put forward by them, or by ... did the committee ask them to?

Amanda Farmer: The committee actually asked them to put it forward so that the owners would have another choice.

So therefore, what then ... yes, the agent should've said was like, "If I am reappointed, I'll get the commission. If I'm not reappointed, then I'll tell the broker to give the commission to your new agent." Depending on whether or not you gain, you have an agreement with that broker, that's another thing. That's another story for another day, Amanda. We want to talk about insurance and talk about distributor agreements and authorised representative agency agreements, as well. It's another topic for another day, but yes, you've got to still have an agreement with that broker to be able to ... for the new manager to receive that commission as well, so that's another topic, but I-

Amanda Farmer: Distributor agreements and authorised representatives. This just sounds fascinating, Reena. I can't wait. I can't wait for this conversation.

Reena Van Aalst: All complexity.

Amanda Farmer: Yes. Now, a hot topic, for sure, commissions, brokers, insurers, strata managers, and how everybody gets remunerated in this big, wide world that is strata, the important stuff to talk about.

Reena Van Aalst: Exactly.

Amanda Farmer: All right. 2019 is going to be hard, hard, hard. Okay. Win. What's the win for this week, Reena?

Reena Van Aalst: Well, at the end of the last year, I had a very contentious meeting. We knew it was going to be. The people came in, just the body language, people paying every little bit of interest in anything that was outstanding even though they had amounts that were outstanding for a long time. At the end of it, when it came, just ... because everybody wanted to vote, or get a proxy, for someone else to vote on their behalf. We had a lot of phone calls the day before about M/I Financial, et cetera.

At the beginning, I was during the meeting, and I could sense some of the questions that were coming. It didn't really start very well, but eventually at the end, I must say that even though the owners corporation, the committee hadn't achieved all its aims in terms of all the motions being passed, but there was an amendment, so it's something ... was passed. Everyone actually, I think at the end, when ... I said to everyone, "We need to basically put all our cards on the table." And I started with my stuff, and I said, "Basically, I don't want to work with people who have issues in terms of agenda items. Let's just put everything on the line in terms of what our expectations are of which other. Management can never do the same." So the sort of like the 2 factions type of thing. It's usually the case for them. There are people that are very entrenched in favour and there are people that are very opposed. It can become quite heated and nasty, and personal at times, which is really disappointing.

Anyway, at the end of it all, even the people that had issues, we all ... they gave me a hug and kiss. Jesus. It's like another building. It's a different building. You go from, like, this extreme animosity and ... I mean, I'm not taking it personally, because I mean, I'm just doing my job, I suppose. But if you live in a building, I suppose, you do take it personally because you live there and you've got to see these people all of the time.

I think sometimes just when these things do happen, it's sometimes good to have a bit of a pause in the meeting and ask people to



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sort of put their cards on the table and then once you've had that discussion and then say, "Well, let's just draw a line on the sand. We can't go back and fix what's happened in the past between people, but moving forward, the owners corporation, we all have a common goal of making sure the building is run effectively and the asset is maintained, and the values of the building of all your apartments are maintained. We're all on the same team. Let's just move forward."

Yes. That's actually quite nice when that happens. It's actually quite a rare occurrence, but I must say when it does happen, it's very satisfying, because you know that deep down in people, we all want the same thing. Sometimes people go about doing it the wrong way, but at the end of the day, when people can acknowledge, "Okay. I was personal, or I did say that, or I did get hit, or I didn't understand what you meant, but ..." There's a saying that my husband always tells me, all's well that ends well.

Amanda Farmer: Yes. Indeed. I think the important point there, Reena, at least for me, walking into a meeting that can be quite tense, everybody is a little uncertain. Maybe people have their battle armour on. They're ready for conflict. This often happens when I walk into a meeting, and they got all the lawyers here. Something's going on.

Reena Van Aalst: Yes. That's bad news.

Amanda Farmer: People just aren't ... yes. For everyone except me. The people just don't breathe. They don't breathe. They're all a little shaky and sweaty and nervous. To break that ice, I like to tell jokes. I like to be a little bit irreverent and unexpected. I think, "This doesn't seem much [crosstalk 00:14:34] ..."

Reena Van Aalst: But you can be, Amanda, because you [crosstalk 00:14:37] with them is limited.

Amanda Farmer: Well, yes. Exactly. Well, they're nice jokes. I'm not brutal. But I think as a strata manager or as a chair person, or even as a committee member, perhaps see that as your role to help people feel at ease. What could I do here to defuse the tension? Sometimes it's nothing. Sometimes, you can't do anything. You just have to get through the first couple of motions, or the difficult motion that everybody's waiting for, and then everybody relaxes.

I think sometimes just knowing that some meetings start like this, they don't always end like this. We will get through it. Everyone will calm down. Everyone will breathe, just helps people to relax a little bit more about strata meetings. And if it's your first meeting and you're walking into something like that, you've just bought in, that's a horrible experience. You think, "What is this?"

Reena Van Aalst: It is, actually. I think it would put you off strata forever if you're a new owner in a building and then I have ... That's why I think as managers, we really need to do some sort of courses on Psychology, because it's not just about meeting technique and all that stuff. I mean, that's just ... that's stuff anyone can learn, really. But it's understanding personality types and understanding where people are coming from, and understanding their motivation. Then, when you understand people's motivation, then sometimes you can deal with it more effectively, and you can deal with it in a different way.

I remember that, I think that there are courses now that the strata management do have some component of Psychology. It's really important [crosstalk 00:15:59] ...

Amanda Farmer: Yes. I'd be interested to know that, too.

Reena Van Aalst: Yes. I think a lot of managers too, Amanda, I think they're put off by these types of meetings. That's why I think a lot of people don't like to become strata managers because this is a very large component of being a manager is running meetings. Now I remember, I had managers that I used to work with that ... they couldn't sleep the night before when there was a contentious meeting. They get anxious. You don't realise the effect that it has on people when we know you're going to get ... It's like going into battle. Into a war, like ... I know it's like a personal problem, to be honest. I don't think it's a real war, but ...

Amanda Farmer: Yes, but still has the same physical feelings about it. Yes. For sure. You're right. It's not like you are lawyers who we do it day in, day out and are very comfortable with conflict. If it's not ...



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Reena Van Aalst: And you're trained, Amanda. I mean, you're trained to do that. That's what you ... whereas most managers aren't. They're just thrown in the deep end and they have to do a meeting, and people are screaming and carrying on. Yes.

Amanda Farmer: Yes. Well, we will, you and I, keep doing our bit to help assist our newbie managers, or those managers who might need some more guidance when it comes to these things. We all have difficult meetings, but there are certainly ways to improve at those kinds of meetings. Great to share that win, Reena, that you were able to, as you say, put your cards on the table, invite others to do it, clear the air, and result in a meeting where they were hugging you. I love that [crosstalk 00:17:16]. I love it.

Amanda Farmer: All right. Well, I am going to finish up with my win for this week. I'd like to share a successful Tribunal matter that is just about to conclude for a building that I've been working with. This matter related to a lot owner who had kind of cleverly, I think, removed the back wall of their wardrobe and opened it out into what was effectively the common property ceiling cavity and made themselves a nice little built in wardrobe.

Reena Van Aalst: That's a first.

Amanda Farmer: So they could toggle out their ... they set up their chest or drawers in there, put some carpet down ...

Reena Van Aalst: Are you serious?

Amanda Farmer: Yes. ... and had a built in wardrobe, like walk-through. It was like Narnia.

Reena Van Aalst: Oh my god. That's, yes. We were talking about, Amanda, something new all time in strata. I have never heard that.

Amanda Farmer: Wow. Well, we had photos of it. We actually had a video because some work was being done around the building, so the contractors who are on the roof saw it and took a video of it. That's how I know. I've got this such a clear image of it.

Of course this building said, "Yes. Okay. That's not on. They don't have approval for that." So we went off, after writing some letters, we went off to the Tribunal. I think perhaps the owners, after a little bit of push back, they did go and get some advice from a strata lawyer, and very promptly after that came to us and said, "What is it exactly that you want us to do, because we are going to reinstate it. We'll put it all back. We accept that we weren't allowed to do that."

Amanda Farmer: As I speak, the proceedings are still going on, but they ... looks like they're about to wrap up on that basis. They will be settled. The building of course, very happy that they haven't had to go through the stress of litigation. They did certainly have to commence it to get the attention of these owners and get them to go and get some good advice, but they're also keeping their building in order and making sure that others along the top floor there don't decide to take the same step and fill in the ceiling cavity with their shoes and dresses and jackets.

Reena Van Aalst: Well, that's a thing that, Amanda, that comes up quite often in a lot of discussions that I have with members when people do the wrong thing. You say, "Well, if you don't take any action against that person, then you're setting a precedent that anyone else can do it." So other people then think, "Well, if they can do it. Why can't I do it?"

Amanda Farmer: Yes. That was exactly the position of this committee. They are very hands-on, very focused committee who like to keep things in order and do a good job of it. They didn't quite like the fact that they had to go through this and had to pay the cost to engage me to do this, but they said, "Look, we don't have a choice. We have to take this step. We've tried. We've written letters. We've gone to mediation. That hasn't worked, and we need to be sending the message to these owners and to others that this is not how our building operates." That message has been sent. It has been received.

The thing to bear in mind that, sometimes, and really often, I would say, in a litigator's experience, it's only the small percentage of

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cases that go all the way to a final hearing. Often, it is enough to take that first step towards starting those proceedings, setting out exactly what your claim is, and why the law supports you, and you'll find that the owners will come to the table, or there'll be some compromise reached that everyone can live with, and the matter's resolved.

Reena Van Aalst: Yes. It's very good outcome, Amanda. Sometimes, you do need to start proceeding for people to actually wake up and realise that ... because the people tend to ignore letters when they receive, especially from the strata manager, when it said a breach of it, a rule, or anything. People don't tend to take much notice. But when it comes to like ... even sometimes just mediation, just you have an application for mediation can sometimes remedy the situation. People say, "Go out of line. Go to mediation." I don't really know what it means. Then NCAT had a whole new area that people don't have someone be involved in, so that could be a good stick to use. But unfortunately, you said, there are some cases that end up going to full hearing because people just, very intransigent in their views and want to have what they want.

Amanda Farmer: Yes.

Reena Van Aalst: That's a great outcome.

Amanda Farmer: Yes. Indeed. Very happy with that one, and a nice way to kick off the New Year.

Reena Van Aalst: Yes.

Amanda Farmer: So, wishing you all the best as you jump back into it.

Reena Van Aalst: Yes. And try and take it easy and enjoy the good weather, because daylight saving, you can still get to go perhaps to the beach or the park or go for a walk after work. So it's really nice to be doing those things this time of the year.

Amanda Farmer: Yes. Enjoy. I'm looking forward to seeing those of you who are ... we'll be catching up with this coming year. Some exciting guests lined up for the podcast. Of course, Reena, we will be here with our wins and challenges, sharing as much as we can with the strata world.

Reena Van Aalst: Yes.

Amanda Farmer: Strata world, see. Not strata land anymore. We are in the world.

Reena Van Aalst: We're just getting bigger and bigger.

Amanda Farmer: I'll catch you next time.

Reena Van Aalst: Okay, bye, Amanda.

Amanda Farmer: Bye.

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