

Publication Date: 13 February 2019
YSP Podcast Transcript: Episode 149. Why strata committees should be meeting regularly

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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 very well and I can't believe it's February already.

Reena Van Aalst: I know! It's going by so quickly.

Amanda Farmer: It is. It'll be Valentine's Day soon. Do you do anything for Valentine's Day?

Reena Van Aalst: We just go out, that's all. But before we used to do a bit more, but now it's always just going out.

Amanda Farmer: Get over it.

Reena Van Aalst: No more presents and flowers.

Amanda Farmer: Aw, that's nice. Well, going out is nice. That's a good excuse.

Reena Van Aalst: Of course. We've still got to go out.

Amanda Farmer: You don't have kids. I'm sure you go out lots.

Reena Van Aalst: Exactly, that's why I have no kids. So I can go out. For those people listening out there.

Amanda Farmer: Yes, bonuses. There are bonuses. All right, well, I'll hear all about your Valentine's Day dinner, okay? The next time we're chatting, fill me in. Make me jealous.

For now, though, let's jump into your challenge for this week, Reena.

Reena Van Aalst: The thing I'd like to address in this week's challenge, Amanda, the topic of insurance commissions. And I know you've had a recent podcast with Heather Lander about this, but I want to just provide some further information in relation to this unfortunate subject, because I think that whenever the word commission is used people have a very negative perception, because you're obviously being remunerated by someone else's payment of the premium, and usually it's a percentage and the higher the premium, the more the agent's receiving.

But a lot of people have come to me asking me this question in terms of disclosure of commissions, and I just wanted to first of all reiterate that strata managers has always had to state that they were receiving a commission. It's always in the agency agreement. What's now different is that it must be disclosed on the agenda of your AGM annual minutes. So that's number one. So there's nothing new about insurance commissions. There's always been the requirement to disclose this.

But when you look at an agency agreement that's been signed, say 10 years ago, because a lot of agreements just kept on rolling months and months after had expired. After the new legislation. People perhaps didn't even realise what the terms and conditions were. You could be a new owner, you obviously weren't involved at the time the agent was appointed. So a lot of people probably weren't aware that there was a commission being received, and it depends also whether the agent was

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sending out the information because most insurance brokers and insurers will provide a summary of the commission that's being provided.

Now, the second thing also that I want to address is changing of brokers. So sometimes people think, "I don't want to stay with this broker because the agent's going to get commission. We want to get our own broker." And sometimes people perhaps use a broker in another area in their life and they think, "Well, that broker can actually just come and do strata." I mean, strata is a very specialised area of insurance and it actually has statutory requirements. It's not just like your car policy where you can insure it for less than market value if you want to, or you don't have to have every single part of a policy, you can just have third party property, you don't even have to insure your vehicle in some cases. So you have far more choices in your personal insurance. When it comes to strata schemes and buildings, you've got to insure them and yet it's quite specific in inner sections.

So in terms of changing broker, first of all, you can do that. But the second thing is that an agent may be remunerated a certain management fee based on the fact that they do receive an insurance commission. And therefore, if that insurance commission is then not being received, then the agent may have a right to ask for the difference or the estimated difference from the owners cooperation. Now, in terms of getting a commission, a strata manager can only get a commission if you're a distributor of a broker or insurer, or you're an authorised representative. So they're the only 2 times that you can actually obtain a commission from a broker or an insurer.

So this changing brokers ... In theory, yes, you can. You can have a broker that you have no remuneration from as the managing agent, you have authorised representatives arrangement, no distributor arrangement because you're not doing all the training that you have to do when you ... When you're an authorised rep, you're under the insurance of that particular entity, so you've got to do training and make sure they understand the law and what information you can give, what advice you can give. So for those schemes out there that want to change brokers, there's no problem with that, but I think you need to speak to your strata manager first and make sure that you will not be out of pocket if you do change.

And also, if you don't have a distributor arrangement or an authorised arrangement, you can't actually deal and arrange the insurance of that scheme anyway. You can't do anything. You can't get quotes. You can do insurance claims, but that means that the owners corporation has to take a greater responsibility in procuring quotes as well. So those things, I think, sometimes aren't understood well enough by owners corporations.

Amanda Farmer: A few questions that I've got there, and thank you for raising this. Just for listeners who might not be across the past episodes. The episode you're referring to Reena with Heather Lander was back at episode 138, and we did get, as I expected, lots of questions and some emails about that episode. Comments about this always controversial topic of insurance commissions. And I know that some of what you're offering today, Reena, is in answer to those questions and those comments. So thank you for that.

The authorised representative distributor arrangement, you've mentioned there's some training that you have to do. How do they come about? So say that you're a new strata manager, you don't work for a big company because I imagine that the relationship is with the company.

Reena Van Aalst: That's correct.

Amanda Farmer: So you're starting your own business, for example, and a couple of years ago this was you. Does the insurer approach you to set up those agreements?

Reena Van Aalst: Yes, normally they do because obviously they want your business. They want schemes to be referred to them by you. You need to have that arrangement, otherwise they have to deal directly with the client. They can't deal through you.

Amanda Farmer: Got it. Okay.



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Reena Van Aalst: So yes, an agent can't deal on arranged insurance unless they're a distributor or an authorised representative of a broker or an insurer or an underwriter. So if you go to, say, another company, which there are many brokers out there that deal with, say, commercial properties, for example. Or other brokers out there that don't necessarily deal in the strata space, or they may think that you're a risk to them. They don't want to have an arrangement with you because they feel maybe you've got a bad reputation or there's something that's happened in the past and you think, "Well I don't want to ... As an authorised rep, I don't want to have someone under my license, under my insurance that I know is not necessarily giving advice about insurance or whatever." So sometimes you may not have a relationship for a reason or for no reason. They used to never come across each other, or you inherit a building from another manager and you haven't used that broker before.

Amanda Farmer: Right, okay. Yes, because that was going to be my next question. So you wouldn't have a relationship with all insurers or all brokers. So the point you're making there is, if you're looking to change insurers, change brokers, and I know that's something that Heather spoke about in Episode 138, that you should shop around, check out the market, see what other brokers are doing. Just touch base with your strata manager and just make sure that strata manager has that legal relationship with that insurer or broker before you get excited about a change.

Reena Van Aalst: Exactly. And also, I think just finally on this particular subject is the fact that if a commission is allowed in the agency agreement and has been calculated within the remuneration package of the manager, then before you go off you've got to make sure that your strata manager may not ask you, or there's a clause in the actual agreement that says, "Well, hang on. If you're not getting a commission then the premium has to be paid for by the lot owners." Now, I think I've said this before on the podcast, Amanda. I mean, I think managers will be held in much higher stead if they didn't receive insurance commissions, but unfortunately, it's a large part of the remuneration and a lot of buildings don't want to pay extra. This is the problem. So when it comes down to money and cost, people have to make choices about what they want. So you can say ... Now in the new SCA agreement, you can actually state to have no commission and there's three different price points.

Amanda Farmer: So it is a good reminder for buildings because some are very quick to criticise commissions, and understandably so. As you say, Reena, it has that bad taste. It seems like money for nothing.

Reena Van Aalst: Like financial advisors. They have a very negative ... Because they're getting commissions as well.

Amanda Farmer: Yes. And has that perception that you would then promote a certain insurer over another without having any regard to the specific interests of the scheme. But bear in mind that if commissions are to disappear, then management fees would almost certainly be increasing.

Reena Van Aalst: Go up. Yes.

Amanda Farmer: Okay. Well it is a topic that we do keep coming back to on the podcast. We do get a lot of feedback from listeners in relation to commissions, comments under our episodes on the website and discussions in the forum. So it's something that we will keep addressing and making sure that our listeners and the strata sector is as educated as possible on the issue.

Okay. My challenge for this week relates to strata committees. And I'm raising this as a challenge because I've had a number of lot owners, both in the forum inside the Your Strata Property membership community, and also just general emails that I get in my inbox. Lot owners complaining that strata committees are not holding formal meetings, are making decisions over email that are not disclosed to lot owners because there is no meeting, there's no notice of meeting, there's no minutes of meeting. And this question comes up again and again, can they do that? Should they be doing that? Are they allowed to do that? And I thought I'd ask you, Reena, from the perspective of the strata manager, because I've made a little assessment of why I think this is happening.

I think it might be because committees don't want to pay the extra cost that might be incurred when they've got a strata manager to have the strata manager involved in preparing the agenda for a regular committee meeting. Maybe there's a monthly meeting and there needs to be an agenda, for distributing that agenda, for attending the meeting perhaps to guide the committee through the correct processes, and then for issuing the minutes. So committees are just saying, "Well, there's 3 of us. We'll jump on email and

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we'll make decisions and we'll save ourselves some money."

What's your experience as a strata manager working with committees, both small and large buildings? What do they usually do? What are they doing wrong? What should they be doing?

Reena Van Aalst: Yes. Larger buildings generally, Amanda, do have meetings regularly because there's usually a lot happening and the quantum amount of money that's being spent in the budgets are much larger. Now, the smaller to medium size buildings don't, and what we try and do is basically, if there's obviously a committee, we make sure the majority agree because we don't want to just have one person telling us what to do, which happens quite a lot.

Amanda Farmer: For day to day things?

Reena Van Aalst: Yes. Let's say they want to approve a quote and they don't want to hold a meeting, but what we'll do is say, "Okay, we'll approve the quote, but we'll make sure you've got at least 2 or 3 quotes because you gotta show that you've actually gone to the market, you're being transparent." And also we then try and ratify it at the next meeting, so therefore there is a record that this quote's been accepted.

Reena Van Aalst: Another thing we try and do is have meetings in writing where people just use a voting paper. So there's been a number of quotes that are to be accepted or going to be accepted, they can be done in that way. But if it's a large amount or it's a big project, or something that's quite contentious ... And it may not be a big amount, but you know it's contentious. You can't pass this. You've got to have a meeting. You don't want to have a meeting, that's fine. I don't need any more meetings than I already have. Let's just do a meeting in writing where you'll approve a quote and you'll ... You'll have 3 quotes and you'll approve one of them, or are you going to proceed with some action, so at least all the owners are aware.

But definitely, I think the agent has to be strong enough to tell the committee that, and sometimes people don't want to upset the apple cart or they actually don't want to have anymore meetings, and I really can't blame them for that. But the problem is that it's all fine until something goes wrong, and invariably you think you're saving time by people doing emails. But a new owner can come in and all of a sudden the dynamic changes, they're unaware of what's happening, they weren't aware of this money being spent, for example.

I'll give you another example. So there's a small scheme that we manage and they want to replace the roof. So even though they're now holding a general meeting to pass a special levy for the roof, we're still going to have the committee meeting in writing or in person to actually approve the subject quote. So we've got 3 quotes. Whereas, some agents will say, "Amanda, I've already passed the special levy. They know what it's for." But I don't believe that's acceptable because at the end of the day, they might say, "I don't want to use this company. I've had a bad experience with them," or, "That's not a like for like quote," or, etc. So I think there's a bit of a difference, I think in terms of how schemes are managed.

But it does come back to, I think, the arrangement the strata manager has with the committee and trying to make them a bit more responsible. And instead of showing them that, you've got to ... Even though you think it's more expedient, you don't want to have meetings, it may cost you money. But in the long run, you've got to basically have some form of formal recognition of decisions that are being made, and that can only be done through a meeting.

Amanda Farmer: Yes, and you're really protecting yourself, I think, as a committee member.

Reena Van Aalst: Yes, exactly.

Amanda Farmer: And I know both you and I have been committee members in the past, and I'm currently a committee member. All I'm thinking is, "Well, I want there to be full transparency, clear disclosure. I want our owners to know that this is happening so that if they have a problem with it, they can let us know before the fact." Because if you're not making that disclosure, they don't know because there's no agenda of a meeting on the notice board and there's no minutes. They are well within their rights to come

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back later and say, "Why did this happen? Who made this decision? This shouldn't have happened." And to be the subject of that criticism is not somewhere I'd like to place myself and don't recommend to any committee members.

Reena Van Aalst: And I think, also, Amanda, too committees actually do a lot of work and sometimes people don't realise the amount of work that's being done until you have a formal meeting and you can show, "These are the quotes. This is what we're doing. We're getting information about this. We've spoken to our neighbors about that." So it's also I think a tool by which the community can use just to show what items it's been working on during the year, and when the AGM comes they can ... If you've got minutes you can show when people say to you, "Well, why have we spent \$8,000 on this?" Well, if you look at the committee meeting held on this date, the quote for that was approved then.

Amanda Farmer: Exactly.

Reena Van Aalst: [crosstalk 00:14:13] instead of trying to explain what you've been doing because it's all there in black and white.

Amanda Farmer: You've got the paper trail. And do you have buildings that will not involve you in their committee meetings, but they still hold them? So they'll set up their own agenda and-

Reena Van Aalst: Well, we had one that was doing that and now they're not doing it anymore because obviously things had gone pear shaped because decisions weren't being made and things were just being deferred. But yes, there's only one. And there's one that ... They don't actually ask me if I'm available. They just give us the date, which means they don't really want us to come, and that's fine by me. I mean, if we really wanted to we could always change dates or I could get my colleagues to go to the meeting. But on the whole, no, most people do want us to be involved because they understand the value.

Actually, now that you mention that, one of them actually has quite a lot of large things happening and the poor chairperson's signature ... They're just inundated. And I just said to them, "Well, we're happy to help you." And they said, "Oh, yes. But the owners don't want to pay." I said, "Well, that's fine. If you want to subsidize everybody else, go for it."

Amanda Farmer: Yes, on your time. Exactly.

Reena Van Aalst: Yes, I mean, we help them with the agenda. They give us a draft and we try and help them with that. So we do the draft agenda for them. Obviously, we can't do the minutes because we're not there. And sometimes also it's really hard to understand, like I say, already here and you action them, and it's like ... Because you don't understand the context and sometimes when people write minutes they don't really ... They write it in such a way that if you were there, Amanda, you'd know what they were saying. But if you were reading it as a person that knew nothing about that particular subject, it does get hard. So that's another reason I think why managers should be there because at least they can give advice ... Or they agree with things and can say, "No, you can't do that because you haven't done this."

Amanda Farmer: That's right. And you think you might be saving money by not having them there, but having them there you could well be saving a lot more money because they can say, "No, don't do that," or, "Do it this way," or, "No, I've got a contractor who can do that."

Reena Van Aalst: Or, "I can give you another quote for someone [crosstalk 00:15:57] in another building which might save you a lot more money." Yes, I mean, there is value there. But I suppose for some committees maybe the manager doesn't provide that value and therefore they don't really see the reason for paying that money.

Amanda Farmer: That's a different problem, isn't it?

Reena Van Aalst: Horses for courses, I think. We can't put everyone in the same boat.

Amanda Farmer: Okay. Well I hope that's a helpful discussion for those many listeners I know who are struggling with committees

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who they feel are not transparent. You can always get the transcript of these episodes from the website where all the podcasts are stored, YourStrataProperty.com.au/podcast. And check out this episode in the list, which is episode number 149. And if you grab a copy of the transcript, you can send it to your strata committee and say, "Hey, this is what a very experienced strata manager and strata lawyer say that you should be doing, and you guys should take a look and perhaps try to change the culture of the building when it comes to those types of decisions and the way the committee conducts itself."

Reena Van Aalst: Exactly.

Amanda Farmer: Okay. Let's jump into your win for this week, Reena.

Reena Van Aalst: Well, unfortunately, most of us as either managers or owners or committee members will know the whole topic of by-law breaches, and there's always people in the building that don't comply. Especially when it comes to, like you said, Amanda, washing on the line or rubbish disposal, or even keeping items in the car space. So we've lodged applications to go to NCAT for a couple of our schemes where people have left stuff in their car space that's unsightly, and washing on the balcony. And luckily, for one of them, washing on the balcony, they actually have now stopped doing it since the NCAT application. The hearing date was set, so we'll see how we go. But these things are obviously behavioural and therefore, they might remove it now, but who knows after the ... I might go to the hearing and say, "There's no washing now," but then the day after I might come back up again.

But I think sometimes when people get letters from us they pretty much ignore it. But when they get something from a budgetary authority like NCAT they probably think twice about it. So hopefully, they will continue not to have the washing on the balcony. But I think for all of us ... I mean, as managers so much time and energy is expended ... And even committee members in trying to enforce by-laws. It affects everybody and sometimes, unfortunately, everyone's different. Not everyone shares the same values even though they agree to live in building and abide by the rules. But Amanda, because washing on the line is one of those ones that is unfortunately prevalent, and one day it's gone and the next day it can come back again.

Amanda Farmer: Well, you're right, and that is the way that the law is structured, the strata law is structured, and these breaches of by-laws ... The breach has to be happening at the time. The Tribunal can't make an order if the breach is not actually happening at the time of the hearing, which makes that ... And noise is another tough one to prove in relation to that. So let's say someone was very disturbed on New Year's Eve because there was a party going on, but the application's before NCAT in March and the tenant hasn't made a peak since then. Well, unfortunately-

Reena Van Aalst: Or they've left.

Amanda Farmer: Or they've left.

Reena Van Aalst: The tenants left now, so-

Amanda Farmer: You're not gonna have too much luck then with that application. So that's why it's good to be aware of the stages of intervention that you have, and I recorded a Facebook Live on the Your Strata Property Facebook page just last week, I think it was, about noise and dealing with noise problems and starting with a knock on the door and starting with talking to your neighbors. And the washing could be the same thing, or there's stuff on the common property where it shouldn't be. Having that conversation if you feel that you're able to, or asking your strata manager to make a phone call to have that conversation is the first step, and see if that will stop the practice. And then it is those recurrent recalcitrance, if you like, who continue that we might end up before the Tribunal with. But that would be, hopefully, the minority of cases.

Okay. The win that I'm bringing to the table this week relates to the replacement of a lost certificate of title. Now, this is not just one win, but regularly my firm is asked to apply to Land Registry Services for replacement certificate of title, and it's generally, I have to say ... An instruction we get from strata managers offices, the strata manager usually holds the common property certificate of title on behalf of their owners corporation clients, and sometimes in big offices and with by-laws getting registered and post coming in and post going out, certificates of title can get lost. And when you lose the original certificate of title, that can be a tricky situation to

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explain to your client, number one, and then you very promptly need to be taking steps to ensure you can have a new replacement certificate of title issued by Land Registry Services.

Have you experienced this, Reena, where a certificate of title has gone missing?

Reena Van Aalst: Yes. So I've actually taken on 2 buildings, Amanda, where there wasn't a CT and there wasn't a CT for ages, and I was thinking, "Well, how can you not have a CT for ages when I positively consolidated as part of the new Act, and so therefore that wasn't even done. And it depends also ... I mean, obviously I do a stat deck and everything to say, ["Carriage 00:20:53], blah, blah, blah. It's not in my possession." You've got to give evidence to show that you're the agent, you've gotta attach your agency agreement. Sometimes you have to attach a bill. It depends on who's looking at the application at the Land Registry Services.

But the issue there ... I mean, I don't understand how an agent can be running for so long and not even bother getting a new CT. And they go, "Oh, there is no CT." They just gave me a copy of the one that I don't ... Yes, but I've had actually 2 that I've had to apply for. I think, 2 or 3.

Amanda Farmer: Yes. You shouldn't be waiting, strata managers. You shouldn't be waiting until a bylaw needs to be registered to order a replacement certificate of title. You really need to get onto that.

And the process is fairly simple. You've hinted at part of it there, Reena. You do need to complete a statutory declaration setting out when was the last time you saw the certificate of title? We sent it to a lawyer and it never came back. That could be the situation. We've searched the office, we haven't been able to find it. Our usual procedure is this. It's not there in the folder. It's not in the register. Whatever it is that you do. And Reena, I know you do your replacement CTs yourself. You do those applications being experienced. But other strata managers send them out to a lawyer and we do all that for a fee and fill in your stat deck for you, and send it off to land registry services with the appropriate form and a cheque for the replacement. So you do have to pay. And I wonder if strata managers bear that fee. If they're the ones who've misplaced the CT or passed it on.

Reena Van Aalst: Yes. Who knows? I mean, that's a very good question. I mean, I've never lost one, and I know that in my last company we never lost any. So that's a very good question, actually, because I mean, you'd have to look at your disbursements to see if it's hidden somewhere there, but anyway.

Amanda Farmer: Yes. And if you are in a company that seems to be losing CTs regularly, maybe just have a look at the process for how CTs are kept. And when they come in the mail, where do they go? And how does a list of all CTs we're holding get updated? That kind of thing. We certainly have a process in our office.

Reena Van Aalst: Well, when you receive it, Amanda, from LRS you've got to sign for it, number one. It's always just by registered post. So I don't know. Obviously when you do get the new one, make sure that ... Obviously you've got to sign for it so they know you've got it. You can say you never got it. Then what happens when it gets to the office is a different situation.

Amanda Farmer: But if you are missing a CT, in need of a replacement, it's not a difficult process or a scary process. It is possible. So don't panic if you have lost one. The other thing is, if they become destroyed somehow, if they get very old or they're ripped-

Reena Van Aalst: If there's a fire or something.

Amanda Farmer: Yes, exactly.

Reena Van Aalst: In your office.

Amanda Farmer: They do. Heaven forbid that you would have to replace 50+ Cts, but anyway. Could happen. They should be kept in a fireproof safe, just by the way.

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Reena Van Aalst: Good point.

Amanda Farmer: Yes. But there's that process and there is an information sheet from Land Registry Services setting out how it's all done, so I'll put a link to that information sheet in the show notes for this episode.

Reena Van Aalst: That's great.

Amanda Farmer: Okay. Thank you very much for another fab episode, Reena. I send you back out into the world of strata to keep doing good, doing well, attending meetings. That's pretty much how it goes.

Reena Van Aalst: I hope I'm doing good.

Amanda Farmer: You are. Enjoy your week.

Reena Van Aalst: You too, Amanda. Take care. 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 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?

