

Publication Date: 16 April 2019
YSP Podcast Transcript: Episode 158. Your access to my latest live QandA

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Intro: Welcome to Your Strata Property. The podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source. To access previous episodes and useful strata tips, go to www.yourstrataproperty.com.au.

Amanda Farmer: Hello and welcome. I'm Amanda Farmer and this is Your Strata Property.

Hello, everyone. Today I'm bringing you something a little bit special. Many of you asked for this. Now here it is. I am bringing you a little bit from my presentation that I delivered a few weeks ago now a for Waverley Council in Sydney. It was an excellent night, lots and lots of strata owners, strata residents, committee members in particular attending to find out how we use by-laws to combat bad behaviour in our apartment buildings. Now, I spoke for about an hour and then we had quite an in depth Q&A session, and that is the part of the presentation which I am bringing to you today. The Q&A.

I have done this a few times on the podcast and I find that these episodes are really, really popular. You all love them. If you like this, go back and check out also Episode 142, that's my Q&A from the evening with Veronica Morgan and Good Deeds Property Buyers. Also way back, Episode 70 and 71, the strata in conversation luncheon with Kelly Partners. And Episode number 37 where I spoke to Owners Corporation Network (OCN) members about the new strata laws in New South Wales, which are now, can you believe it? Almost 3 years old. But lots and lots of really relevant material back in those Q&A's.

So the way that I do these is to record my answers, and because the audience isn't mic'd up at the time, I am now going to fill in the questions so you know exactly what it is that I am answering in the live recording. So today, I've got 12 questions for you. Big 12. Some great questions here ranging from how to access owners corporation books and records, to what to do about a leaky roof. So let's jump in.

This first question you'll hear me answer is about the issue of a notice to comply. This audience member asked me, do we send the notice to comply with the by-law to the owner as well as to the tenant? And here's my answer.

Yes, you should absolutely be including the owner in this correspondence about by-law breaches. Send them copies of the notice to comply so that they know that their tenant is causing a problem. It goes direct to the owner or to their agent, whatever the address for service is on the role. There's been a case in New South Wales at the end of last year that said owners are not responsible for the actions of their tenants. If it's the tenant breaching the by-law, and the by-law doesn't say that the owner has to do anything that they haven't done, then how can you hold the owner before the Tribunal? And you're quite right that I used to say, "*Bring both of them before the Tribunal,*" because owners are bound by bylaws. But the tribunal's made a good point. If the by-law doesn't say that owners have to do A, B, and C, then what part of the by-law are they breaching?

So you know what I'm going to say, don't you? Make sure your by-laws are drafted so that they place responsibility on the owner, and that's something that I've done with the waste disposal by-law. Owners are deemed to be in breach of this by-law if their tenants are in breach of this by-law. That is now, since this case at the end of last year, becoming really important. So wherever you can bring the owner in, and it's probably every by-law really where you're going to incur some costs, you want to be able to sheep that home to the owner. You need to be making the owner just as responsible as the occupier, and that's where you'll have impact because money talks with the owners. They don't want the penalties. They want a profitable investment. They don't want letters coming from their agent or from the strata manager all the time. So they are more likely than the tenant to comply, and you can recover costs because they own the property and the debt will run with the land. So very important to involve owners. Thank you very much for raising that.

The next question, how do we move on? Rusted on committee members. How do we get a great strata committee? Now, this person told me that they have 8 members on the committee, 5 of them are new members just elected at the recent AGM, and three of them are long standing committee members. Here's how I answered that question about how we might move that old guard on.



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Amanda Farmer: It's a gradual shift, and it is showing ... I'm not sure how big your building is, but it's showing to the rest of the owners that it's time for a change, and we 5 newbies are the ones who are driving this change and doing great things. The other 3 are getting in the way a little bit. And that may be face to face conversations. Strata living, if you haven't worked it out yet, is very political. So I often have clients who come to me and say, "How do we deal with this under the law?" And I say, "Well, that's not a legal question. That's a political question, and you need to do some campaigning." And I've helped clients with campaigning. With sending letters, with door knocking, with getting support for a particular position, whatever that is.

Bear in mind that when you elect a strata committee at a general meeting, you set the number first. So I'm not suggesting any funny business, but I have seen buildings who want to achieve what you're talking about. They've always had a committee of 8. They want to be 5. They've talked to other owners and the other owners agree, and they plan that when that question comes up at a meeting, how many members should we have in our committee? I propose 5. Yes. All in favour? Yes, it will be five. It happens very quickly. The majority wants 5 and then the 5 who people most want to fill those positions are elected.

Third Question. One of my favourites, as you know. How do we access the strata roll, and are the contact details of owners including email addresses private? Now, you will hear me get a little bit passionate here as I do when I talk about this topic, and I do refer to some disgraceful strata managers. Yes. That is the word that I use. And I have to say, there was one strata manager in the audience. Lisa, you know who you are. And she is not at all a disgraceful strata manager. She's an excellent strata manager. And Lisa, I was not talking about you. Here's what I had to say in answer to that question.

The law is very clear. We have case law. Very clear. Owners are entitled to inspect the books and records of the owners corporation. That's number one. If you're not an owner, you need authorization from an owner. The strata roll forms part of the books and records of the owners corporation. The strata roll must contain certain information; the name of the owner, the address for service, the email address if one has been provided, and 90% of the times there's an email address that's been provided. A phone number, if one has been provided. So all this personal information must be on the strata roll. The strata roll must be in the books and records, and the books and records must be made available for inspection.

The short answer is yes, owners are entitled to the strata roll. It should be handed over. It is almost always never handed over. It drives me insane as a lawyer. I have a Facebook video about this. I have spoken about it on the podcast. I speak about it passionately like this whenever someone asks me. Every event I do, I get asked that question, and it is disgraceful that strata managers don't know the law and will not provide these strata rolls.

You can only inspect the record if you have the authority of an owner. So I inspect records all the time because my client is an owner and they've given me a letter that says, "I hereby authorise Amanda Farmer to go and inspect the records of the strata scheme." You need that in the same way that purchasers need that when they're doing inspections, and they should always do inspections. So it's \$34.10 to inspect the books and records of the owners corporation. That is a statutory fee. A helpful strata manager, when you are making an appointment to inspect records, a helpful strata manager will say, "What is it that you would like? Because I can email it to you." And you will then say, "The strata roll." They will then say, "That's \$34.10," which is the inspection fee which they must still charge. It's a fee payable to the owners corporation, and they can email you the strata roll. So I get asked all the time, "What would you like to inspect?" And I say, "I'm not telling you. I'm going in to inspect to see when I can find." So either way you can do it.

Next up, here's a little tip for how you might get a little bit more information out of a strata manager or someone who is citing the law to you.

This is a really good trick for anybody who's trying to communicate and get information from the strata manager or somebody else, whoever it is, to say, "Thank you for that. Please tell me the legal basis for your view, including pointing to the section of the legislation where that is set out." You play dumb. I do it all the time. I say, "Thanks for that. Can you tell me the section?" I do it to other lawyers. I do it to strata managers, because I approach it with the assumption that I'm missing something. So you can do that too.

Next question. How do we get landlords to comply with the requirement to tell us who their new tenants are?

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Amanda Farmer: So that's called a tenancy notice. I'm not sure if everybody heard. There is a requirement for landlords to tell owners corporations, generally via the strata manager, of the details of a tenant that has moved into the lot. The name, address, contact details. So you know who's living in the building. It is a common problem, strata managers will tell you. We do not get tenancy notices. It drives us crazy. Someone sends us an email, "Come and fix my something," and we realise that there's a new tenant.

It is a penalty provision. So there is, I think it's \$2,000. I think it's a \$2,000 fine if landlords do not do that. So in the past I have sent those letters to landlords to say, "Hey, by the way, this is a penalty provision and there's a \$2,000 fine."

Speaker 3: I think it's 550. 550 fine.

Amanda Farmer: Oh, is that it? Okay. So get your act together. So that's what I ... A letter in those terms to remind them how serious it is.

Yes. Thank you. So within 14 days of the landlords must be notifying, yes.

Next up, important question. What is the process when a committee member has a conflict of interest?

Very good question about conflicts on the committee. Yes, that person is allowed to be on the committee. Think about that advice I gave earlier about banding together with some others to try and push that person out, maybe. Committee members must disclose conflicts of interest in committee meetings, not in general meetings. There's no requirement to disclose conflicts in general meetings. They must disclose conflicts of interest in committee meetings. If that conflict relates to a pecuniary interest ... What is that? An interest that relates to money. A financial interest. It's new in our legislation. It's designed to deal with developers being on committees, building managers being on committees, negotiating their agreements and things like that.

So the question would be yes, they have a conflict, but is it a pecuniary interest? That's in Schedule 2 to the Strata Schemes Management Act. You'll see that it's one of the later clauses, 23 29 down the bottom. Scroll down and you'll see that clause there. Cite that one and say, "You've got a conflict of interest." The committee can decide whether or not the person who has the conflict is present to discuss and whether they can vote. If the committee decides they don't care and this person can be present and vote, then that's how it goes. And you record the disclosure in writing.

Next question. Who should attend mediation on behalf of the owners corporation?

Whoever they authorise. So does a committee member need to go to mediation? No, but the committee would need to authorise someone else. So I go to mediations all the time for buildings. I'm the only one there. No one else comes along. But I make sure I've got a letter or a signed cost agreement, or a committee meeting resolution is what you really need, to approve me going. And that I have full instructions. Because a mediation can go off in all different ways, and someone might come up with a proposal that we didn't think of. And your strata manager, if they're a good strata manager, they're going to then say, "Hang on, I don't have authority to agree to this. I'm going to get on the phone." So if you're not going to be there as a committee, you need to have fall backs in place for, how does this person get instructions? But you don't have to be there.

But you do have to be authorised. And think about this. This is new as well. If you are not a party to the mediation, so if you're a lawyer or if you're a friend or if you're a real estate agent, the other side can object to you being present. So that's happened to me a couple of times where, "Well, she's the lawyer. She can't come." I don't know if that extends to strata managers. I wouldn't think so because they are your agent. Obviously, the committee is the committee. So if you are appointing someone else, a third party, just be prepared that the other side can object and that can then hold up or delay the mediation, or they can just decline to mediate. And if someone declines to mediate, you go straight to the Tribunal. You skip that process.

This next audience member told me that they were in the middle of raising money for a major capital works project and one lot owner had not paid the special levy. What to do?

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Amanda Farmer: Well, you need to sue that owner quick smart. So you need to issue a lesser to the owner. There's a procedure under the Act for recovering levies. You have to stick to it. You have to issue a letter that says, "This is the amount owing. This is how much of it is levies. This is how much of it is interest. And this is how much of it is fees." You might have some strata manager fees because they might've sent some other letters. *"You need to pay straight away. If you don't pay within 21 days, we will go to the local court, file a statement of claim, and recover the levies."*

And those claims are open and shut. The court just says, "You owe strata levies." It's what we call a statutory debt. The legislation says you have to pay strata levies. There are very few good excuses for not paying levies. The ones I've seen succeed is when the owners corporation is claiming the wrong amount, so they can get complicated if the ledger is mixed up and the ledger gets challenged. But otherwise, that's how you recover that and get that going quickly, because that takes a while. In the meantime, think about a special levy that other owners have to cover, or depending on how much it is, a strata loan.

In this person's building, one member of the committee has the exclusive use of a common property parking space, but there's no by-law. Here's what I suggested.

So what you're talking about, what's happening there by the sounds of it, is that somebody has the exclusive use of an area of the common property. The only way they can get that legally is through a by-law which has passed by a special resolution. So unless you've had a special resolution and the by-law, this person does not legally have the exclusive use of the common property. Section 143 is our ... Sorry. They're now called common property rights by-laws. Section 143. They used to be called exclusive use by-laws. They need a common property rights bylaw, otherwise they are occupying the common property illegally. Be prepared that they will say, *"Anyone can park here anytime they want. I don't have it exclusively."*

Great question here about the proposed new short-term letting laws in New South Wales. And in particular, how do we deal with the problem of tenants subletting? Here's what I had to say.

If it is an owner's principal place of residence, then they can short-term let for a maximum 180 days. This is proposed law, by the way. This is not law. If it is not a principal place of residence, then the owners corporation can pass a by-law banning short-term letting for anyone where it's not a principal place of residence. Now, this is a difficult concept because it's been raised with me that a tenant's principal place of residence is the tenancy that they're living in. And I know that the one of the biggest problems with short-term letting is tenants subletting. And the way I read this new law, that is not going to fix this problem because the tenants are going to say, "It's my principal place of residence. I can short-term let for 180 nights a year. That's what the planning law says. I am not an investor owner. I am a person living in this unit as my principal place of residence." So that's a problem I think, and it's one I've only just started to appreciate. So we need to look very closely when this planning law comes in.

Next question. Strata committees. Do they have to meet a fixed number of times each year? Very popular question. Here's my answer.

The answer is no. There is no legal requirement for strata committees to meet a certain number of times a year. General meetings, different. You must have an annual general meeting once in each financial year of the building. There is no similar requirement for committees. There is actually nothing in the legislation about how a committee makes decisions ... Expressly there is nothing in the legislation saying, *"A committee must make decisions in a meeting,"* but there is a whole part of the legislation, that's Schedule 2 to the Act, that says how committee meeting happen. How you issue notices, how you do minutes, what the timing is for the distribution of that. So we as lawyers say, *"That whole section wouldn't exist if the legislature didn't intend for decisions to be made in formal committee meeting."*

And a big problem, and it's why I'm doing the webinar, is that so many people have come to me saying, *"Amanda, my committee never has meetings, but decisions get made and I just find out that something's happening. But there was no notice. There was no meeting. There was no minutes of meeting."* And this process is important because when you see a notice of committee meeting, you as owners have the opportunity to object to what's being discussed. And if there is 1/3 of owners who say, *"We do not want this decision made,"* then the committee cannot make it. You don't know what decision's being made if you don't get a notice.

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Amanda Farmer: And when I say, "Get a notice," there's different rules for small buildings and different rules for large buildings. Small buildings, the notice just goes on the notice board. It does not have to be distributed. Large buildings, 101 lots or more, the notice must be sent to all owners. Just to confuse you even more, when it comes to minutes in a small building, the minutes must be sent to all owners. And in a large building, the minutes only get sent if an owner requests them within 7 days. It's almost the reverse. I don't get it. I have to read the legislation every time. This is only in my head because I've recorded a video on it and it's going to be in the webinar, but it drives everyone crazy. And when I see a strata manager and I say, "You need to send those minutes." They say, "No, I don't. I can just do it ... They're a small scheme." And I said, "*No, no. Small schemes, you must send minutes. Larger schemes, you don't. It's very confusing.*"

Here's an interesting one. How you get rid of an incompetent strata manager. Here's what I had to say.

Do you know what you do? You listen to the episode of the podcast that I produced yesterday, published yesterday, episode 154. We talked about exactly that question. You go back to the contract, you look at the duties of the strata manager under the contract, point out those duties in the contract that they're not fulfilling, and you can go to the Tribunal and you can seek an order terminating a strata manager's contract if they're not meeting their obligations.

Now, finally, and I actually think we're up to 13 questions. I said 12. Got a bonus. What to do about a leaking roof that the owners corporation will not fix? Here's my guidance.

Well, you don't have to worry about the by-laws because I'm not sure ... It depends on what your by-laws say. But it's in the legislation. Section 106. An owners corporation must repair and maintain the common property. And all of our cases in New South Wales about that, Court of Appeal, the Supreme Court, the tribunal, they have all agreed that that is a strict and absolute duty. There is no excuse for not repairing and maintaining the common property. It doesn't matter that it's too expensive. It doesn't matter that you don't have the money. It doesn't matter that you're planning to do it. If the roof needs to be done and you have a report that says it needs to be done, or the water is coming into your bedroom, it obviously needs to be done. The owners corporation must, under the legislation ... Forget about any by-laws. Must do the work.

And that is the most common application I see to the Tribunal. Lot owners taking buildings to the tribunal because repair and maintenance work needs to be done and it is not being done. And it ends up either the owners corporation agrees and says, "*All right. Yes, we'll do it now.*" Or it becomes a fight between building experts. One says it doesn't or it's different, and the other says it does and this is what needs to be done. So section 106. Absolute strict duty. That would be the avenue that I would go down if I was you.

And that is the inside scoop on my Q&A session at the Waverley Council education evening from March 2019. I hope you enjoyed that. Lots of gold there for you. Do let me know your thoughts. Drop me a line, amanda@yourstrataproperty.com.au, or post your comment under this episode on the website. I'll have Reena back next week. Looking forward to it. Catch you then.

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?

