

Publication Date: 07 May 2019
YSP Podcast Transcript: Episode 161. When is it ok to delay repairs and maintenance?

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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 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. I am in full speed for the year. I was just looking at the date and realising that we're almost halfway through, so soon we'll be on the other side and preparing for wrapping things up again.

Reena Van Aalst: Exactly. It's going really quickly, but I suppose we say that every year, don't we Amanda?

Amanda Farmer: Yes, indeed, we do, and I'm looking at our episodes. We're up to episode 161.

Reena Van Aalst: Wow.

Amanda Farmer: Can you believe that?

Reena Van Aalst: That's amazing Amanda.

Amanda Farmer: Gosh, that sounds exhausting.

Reena Van Aalst: A lot of talking.

Amanda Farmer: A lot of talking. One of my neighbours watched one of my webinars recently, and she said, "Oh my God, you can talk." Said, "I didn't realise. I just ..."

Reena Van Aalst: Only someone with an American accent would say it like that.

Amanda Farmer: Am I giving her away? It's not an American accent.

Reena Van Aalst: Sorry. Canadian.

Amanda Farmer: I don't know. Yes, that's the nature of this medium is we can all talk at you, everybody, there you go, and you don't get to talk back.

Reena Van Aalst: And you can turn us off at anytime when you get sick of listening to our voices.

Amanda Farmer: That is true. Exactly. Now, let's stop being self-indulgent and let's talk about your challenge for this week, Reena.

Reena Van Aalst: This is a very interesting and distressing challenge because it's really hard to see owners suffering, but in this particular scheme it's a fairly new scheme, and the basement carpark is basically unusable. The anchors haven't been installed properly. It's flooded. It's a big mess. Obviously the developer and the builder just want to come in and do a band-aid job. They won't actually let us know what they're going to do. They won't provide a specification for our engineer to actually assess.

Unfortunately the owners corporation has had to instigate legal proceedings to get a meeting to occur. In the meantime, we're



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getting numerous phone calls from property managers and owners who have basically rented out their apartments with car spaces not knowing that the car spaces were not usable. Many tenants are going back to their owners and landlords saying, "Well, we want a rent reduction." They're all coming to us, Amanda, and saying, "Well, what do we do? We've had to park on the street," and street parking is very limited.

Reena Van Aalst: There are also storage cages as well that haven't been able to be let out which are part of leases, or which were part of leases originally. Because originally the cars were parking there but it became so bad, Amanda, that the owners corporation had to basically stop any entry into that carpark. I really feel sorry for the owners who are losing rent and who are obviously having there's also rent claims against the owners, and going to Fair Trading.

I was just questioning, Amanda, in a sense what are the owners corporation's obligations when there is a very substantial defect that it is trying to negotiate with the builder and follow all the legal processes in order to do so? In the meantime people are suffering loss of income.

Amanda Farmer: Gosh, what a headache. Have a look at Section 106 of the Act, which is, as lots of our listeners will know, the section that says an owners corporation must properly maintain and keep in a state of good and serviceable repair the common property. If you have a look further down that Section to subsection 4, it says if an owners' corporation has taken action against an owner or other person in respect of damage to the common property, it may defer compliance with its repair and maintenance obligation until the completion of the action if the failure to comply will not affect the safety of any building, structure, or the common property.

This is new. This was not in our '96 Act. I wonder if this Section would allow the owners' corporation to delay the repair and maintenance of this area because it is asking a third-party, being the builder or the developer, to do it. What it doesn't say here is that the owners' corporation will be off the hook for any damages, any losses that may be suffered. It doesn't say that, because, as you know, this section is also, Section 106 is also the place where we find the right of lot owners to recover damages from the owners corporation because of a failure to repair and maintain.

Being a new section, we haven't seen this as far as I'm aware, this tested. I imagine you've got lawyers involved.

Reena Van Aalst: Yes. We do actually, Amanda.

Amanda Farmer: I'd be asking them whether this subsection four in Section 4 in 106 helps you. It probably does.

Reena Van Aalst: Yes. I think it does, Amanda.

Amanda Farmer: In relation to damages that are being suffered, well, I'd certainly be telling the developer about those claims and making sure that they are aware that these are the losses that are being claimed by lot owners and we will be looking to recover these losses from you, Mister Developer. Absolutely. It's important to put them on notice of that sooner rather than later, even if the owners corporation has to pay them out first and recover them later, just to mitigate, if you like, and avoid increased costs down the track. That would certainly be something to talk to your lawyers about.

A very sticky situation, and this is what happens when you have this defective work and bad builds, it just snowballs into these big, big problems.

Reena Van Aalst: It's funny you should say that, Amanda, about the snowballing of problems, because when you think about, say, the Opal tower and all those other events that have occurred recently and the cladding incidents, and to me it just seems like there's such a protracted course of action that needs to be taken by owners corporations just to basically get to square one.

Really I think the government has really let apartment owners down when it comes to new buildings and these types of defects, where there's basically these third-party certifications that if the certifiers don't certify them, they'll never get work from those

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companies ever again. That's pretty much well-known in the industry. In this particular case they didn't even do the proper water testing to see how acidic the water was before they installed the piers. They relied on some other third-party report.

Reena Van Aalst: It just goes to show you, I mean how do these things happen? How do these buildings get built with such poor compliance with the law, poor management? These apartments were so expensive. If you look at any apartment, Amanda, in terms of like you look at them advertise 1 bedroom, 860,000, 2 bedrooms over a million. These are just new apartments in the inner city areas. We're not talking about harbour views or anything. You feel sorry for people. They invested all their money in a development and then ...

Amanda Farmer: They're sold the dream.

Reena Van Aalst: Yes. Exactly.

Amanda Farmer: Off the plan.

Reena Van Aalst: They're just sold the dream. It's really just distressing.

Amanda Farmer: Yes. It is, indeed. I'm not sure that there's any easy answer absent legislative intervention. I know many advocacy groups that support this sector have been calling for that for a long time and it just doesn't seem to be happening. I'm not sure, I imagine this building, the construction was started too early for the defects bond to play a part.

Reena Van Aalst: It's a few years old now, so it's not like ...

Amanda Farmer: The government will tell you that that's what that is there for, and that that's going to cure a lot of our problems. I think we would not agree with that, Reena.

Reena Van Aalst: No. Sometimes the quantum amount of the defects is way more than those types of amounts that they're putting aside as a bond.

Amanda Farmer: Indeed. A sad example of what some new buildings and their owners are going through, but keep us updated on that one, Reena, how you work your way through.

Reena Van Aalst: We have a great lawyer that's helping us so it's really good to have that assistance and good experts as well.

Amanda Farmer: Excellent. My challenge for this week, it is a question from a member inside the Your Strata Property membership community, and it's a question that I could not answer. I said I am going to bring this question to the podcast, and I am going to ask the guru that is Reena Van Aalst does she know the answer to this question. Can a building change its financial year?

Reena Van Aalst: The answer is yes, but I think you have to have a good reason to change the financial year end. The majority of times that we've had to do that in the past, Amanda, is because the levy cycle doesn't align with the financial year end. To give you an example, you might have a financial year end of 31 July, 2019. Your levies are due 1 January, 1 April, 1 October, so the levy cycle doesn't align with your financial year end. Sometimes you need to just change it to bring it in line with that. That's usually the reasons that I've been involved and we've had to change the year end.

Obviously that's put to a general meeting and it's adopted at a general meeting, so it's not just something.

Amanda Farmer: That's how you've done it, because that was the specific question, "Is it an ordinary resolution? Is it a special resolution? Can we do it at all because we can't see it in the Act?" I wasn't aware of any buildings doing it.

Reena Van Aalst: Well, I don't think the act is very prescriptive about the financial year end apart from having an AGM in a

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financial year. The financial year obviously starts at a date that was set just after the first AGM, so that's just an arbitrary date. Usually the reasons that people do change it is to align their levy cycle with their financial year end, so all the 12 months of levies sit within the right period. I don't know perhaps there would be any other reason why you'd want to do that.

Amanda Farmer: Ordinary resolution you say and the strata schemes accountant or when they're doing their financial statements will just close off.

Reena Van Aalst: You've got to readjust your financials and how much you collect. One quarter will be probably for four months rather than three months just to make up if you're aligning it or it could be less, or there'll be a two month levy rather than a three, so it'll basically just change to fit in with that financial year end.

Amanda Farmer: Perfect. Love it. Love it. Thank you for that quick answer. That's what we're here for. That's what Reena's here for. She's got all the answers.

Reena Van Aalst: Not always.

Amanda Farmer: Moving on to your win for this week, Reena.

Reena Van Aalst: Again, as I said to you in our last podcast, Amanda, sometimes you think that everything that could ever happen to you in strata has happened to you or you've heard about it from someone else going through a particular issue. In this particular scheme we took over quite recently, there was an ongoing issue with a particular owner which is not unusual. Unfortunately that lot owner named me and individual members of the committee as respondents. Of course, we had to get our lawyer to go to the Tribunal and undertake that exercise.

When I was at the Tribunal, that person said, "I don't have anything against Reena."

Amanda Farmer: I just named her as a respondent to my litigation, but I really quite like her.

Reena Van Aalst: Unfortunately, I think what it brings to light, Amanda, is that, again, like we talked about the Land Registry Services and LPI, which is the former name, people can just lodge any application at the Tribunal and as the members we don't vet anything. It just goes into a queue of applications, rather than saying at the time. If there was some vetting process, then at least they'd say, "Well, hang on."

If people aren't represented, they just do it themselves. I'm sure that if the Tribunal paid an extra person just to perhaps do some vetting at least the person would have said, "I don't mean that." Then there wouldn't have been a case to remove us. We wouldn't have had legal fees incurred, and all this sort of... I think there is a lot to be said about the whole processes where people can just lodge application after application after application and really unless you get a cost order which, again, is not easy to get in the Tribunal as we all know.

To me having a forum where lot owners can cheaply bring their issues to is a wonderful concept except when someone becomes wouldn't say vexatious, maybe that might be a bit of a strong word, but people have an issue. I just think sometimes when there's no repercussions for people doing things it just sometimes can encourage, not always, in some situations. Then you've got to try and extricate yourself from a situation, and then go to all the costs and time and energy of doing so.

Amanda Farmer: Yes, and not to mention that emotional burden. It's probably something you're more comfortable with than, say, resident owners or committee members when you're named in Tribunal proceedings, but I can imagine that that would be quite confronting to get a letter in the mail that says you're being taken to the Tribunal for whatever reasons are articulated. What we call those types of applications as lawyers are misconceived applications.

Certainly it is that situation where the lot owner is doing the job themselves, filling in the application form and just going up and

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filing something, never really understanding that most often it is not the owners or the committee members who are the correct respondents or the strata manager. It is the building. There are very limited circumstances in which the committee members would be named respondents. Having to go through that process, you're having to turn up. The other committee members having to turn up, engage a lawyer to give advice, incur costs

Amanda Farmer: I agree with you absolutely. I think there needs to be a better process at that preliminary level whether it's at the Fair Trading level perhaps, where they can act perhaps in a bit more of an advisory capacity. I know that owners can ring Fair Trading and get advice. I don't know how detailed that advice is. Sometimes, as we know, it's not correct, so having a better first stop and being able to get questions answered, who is the correct respondent to this application, and even to have the form checked before it goes through, I think that's a great idea.

Reena Van Aalst: Even then like just a basic checklist, like who is it against. If it has a person's name on it, you ask the person, "Who is this person? Are they responsible for the building? Is it part of an owners corporation or a community association?" Or whatever it is. Just very simple things you can ask. In a sense it would actually free up the Tribunal. Basically you'll go back, write the right thing and then he can then proceed as he had wished to do so in the first place.

Amanda Farmer: Exactly. The win that I would like to bring to the table today, Reena, is to let our listeners know about the SCA, Strata Community Australia awards for excellence. These are coming up. The submissions for the awards are closing on the 31st of May, so the end of this month. There's a number of categories in which you can apply for one of these awards. The awards have been running for quite a number of years now.

One in particular that I wanted to draw people's attention to is the environmental and engagement award. Now, this is sponsored by City of Sydney Council and Megan at council has alerted me to this award. It recognises strata schemes that are working to reduce their impact on the environment. City of Sydney in particular have said that this year they'd like to see lots of nominations particularly from outside the City of Sydney area. I think they tend to get a lot from within their own local government area. They'd like to see a bit more of a mix up from other schemes applying for this award.

All nominees receive a complementary annual membership to SCA New South Wales. The finalists are invited to attend the very nice gala dinner in Sydney, which is on Friday the 26th of July. Look, the inside tip here is that there aren't a whole heap of nominations for this particular award. If you apply, you are likely to be attending that very fancy dinner. Have a little think about it. I will put a link to more information in the show notes for this episode, a link across to SCA's website where they give you the online form to submit your application.

I do recommend checking out that environmental and engagement award. There's a bunch of other awards for strata managers, for strata management businesses, small, large, for rising stars, for team members. There's an essay award. I know Natalie Fitzgerald who is one of our women in strata steering committee members has written about the awards as well in our women in strata blog.

We would like to see as many as possible celebrating themselves and their good work. Buildings, managers, jump in.

Reena Van Aalst: I think it's a wonderful idea, Amanda, because I think for buildings it's a good way to showcase all the energy efficiency initiatives that buildings have actually instigated. In a sense you can see from some of the ones that we manage, you've got savings in electricity bills, in water bills. I think that can also be used for strata schemes as a bit of a marketing tool when you're trying to sell the apartment to say that we have received this award for energy initiatives and being environmentally friendly.

I think City of Sydney also have a food scraps trial that one of my schemes is participating in. I think at the moment especially with our federal election coming up, historically I think people didn't think about the environment when it came to why they would vote for a particular party. I think now in terms of how people are feeling about climate change, et cetera, I think this is a good way for buildings to say, "Well, we are committed in the way that we're able to as an owners corporation to participate in saving our planet." And saving money at the same time.



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Amanda Farmer: Absolutely, and it's something we talk about a lot on the podcast, how these kinds of initiatives add value to everybody's investment. If your building is in a situation where it can devote some time and a little bit of energy to this kind of initiative, it's a great thing to get involved in. If you've been doing it, then check out the awards and see if you can get a little pat on the back for it.

Reena Van Aalst: Exactly.

Amanda Farmer: Well, I think that is about all we have for this week, Reena. Another great chat. Thank you so much.

Reena Van Aalst: It's been wonderful, Amanda.

Amanda Farmer: Look forward to catching you next time.

Reena Van Aalst: 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?