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YSP Podcast Transcript: Episode 169. Restricted matters at AGM | when does chair vacate | rooftop purchase

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Amanda Farmer: Hi everyone, quick announcement from me straight up this week. I want to let you know that I will be at Town Hall House in Sydney for the City of Sydney Council speaking on Tuesday the 23rd of July for Council's Smart Green Apartments Program. It's an evening all about by-laws. You might have heard me speaking about by-laws before. It is certainly a hot, hot topic. I'll be sharing how can you use the power of by-laws to improve your community and I've got a few updates about harsh, unconscionable or oppressive by-laws under our New South Wales legislation. We had a few cases come out of our Tribunal which I'd really like to talk through with you.

This is a free event put on by City of Sydney Council. Spaces are limited. You want to head over to www.yourstrataproperty.com.au/live. We've got about 90 minutes set aside for the night. Lots of time for Q&A as you know, I like to do. Come along, bring your burning strata question. I would love to see you, would love to meet you in person. Tuesday, the 23rd of July. We are kicking things off at around 6 PM and just make sure you are registered [:www.yourstrataproperty.com.au/live](http://www.yourstrataproperty.com.au/live). We'll take you over to that registration page. Looking forward to it! Jumping in now to this week's episode with the lovely Reena Van Aalst. Enjoy!

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 Reena Van Aalst from Strata Central. Hi Reena.

Reena Van Aalst: Hi Amanda, how are you?

Amanda Farmer: I'm doing well, I am enjoying life. Strata is going swimmingly, all of those things that you hear me say often.

Reena Van Aalst: Fantastic to hear.

Amanda Farmer: How are you?

Reena Van Aalst: Just been busy, which is not unusual for this time of the year, actually. A lot of ... June year end's coming up, so busy busy, head down.

Amanda Farmer: Well, let's jump straight in. What has been challenging you this week?

Reena Van Aalst: Well, 3 or 4 weeks ago, we sent an AGM agenda out, and we had shared the agenda with the committee, there were some motions that were put forward by owners. We ask them for some explanatory notes and help them with the drafting of those. Submitted the budget, et cetera, and then, 2 days before the AGM, we get an email from the treasurer saying that, "Can you add these motions under 'Restricted Matters'?", and they included making Lot 4, repair damage to the driveway, it happened like 3 years ago. And it was about half a dozen different motions, and I just had to go back and say, "Well, no, the 'Restricted Matters', which is Schedule 1 of the Act, which deals with meetings of the owners corporation, so it's basically general meetings under section 9. Additional matters to be included in the notice of AGM. And part 1 says "a form of motion to decide if any matter or type of matter is to be determined by the owners corporation in a general meeting.

So that just means that where the strata committee has authority to deal with a matter pursuant to the Act, that that authority is taken away and brought back to a general meeting for consideration by all owners. And anyway, I said to him "No that's not the case." And then he started back and forth and eventually he accepted it.

It's funny Amanda in all the years that I've been practicing strata and this motion has been around for some time now as part of the

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AGM agenda. It's just very difficult to deal with people that don't really understand. It's not about, if you'd asked me "Reena what does this mean, can I include these sections or these types of motions in that part of the agenda?"

Which had already been issued, mind you, this is 2 days before the meeting. I would have explained that this is what it means. And we haven't sent on the AGM agenda which does describe what that motion means. It's just one of those unusual and frustrating events that can happen when people lack understanding of the Act. Which is fine, that's obviously why you go to an expert. Everyone's got their own expertise in life. But it's more about people's attitude when they don't understand a matter and rather than accepting, it's like, "Okay I'm sorry, I didn't understand what that meant." But then coming back and forth, emails, accusatory. Maybe I should use that defamation case that we talked about in our last episode maybe I can use that, but I know this person has an asset so there won't be any problems there. But I just thought I'd share that with our listeners and I think this applies for many strata managers where we have had people that don't understand parts of the legislation.

But I think for a lot of owners if you're not sure about something, perhaps it's best to ask rather than make statements, and then argue the point when, I'm not saying strata managers always get it right. And none of us do, we are always learning, but I think it's important to have a good harmonious relationship and be more mindful of how you ask a question. And that also probably applies to Strata managing agents also, when you want to write to your owners. With me it's just thinking about how you write to people and the tone and if you don't really know something 100% always say, "I'll come back to you," or "I need to check that and come back to you." Rather than making statements and then finding out that they're definitely on the wrong path. Or misinterpreted the intention or what the Act is actually saying.

Amanda Farmer: See I wonder if they would communicate with their dentist, accountant or plumber, electrician in those, call it "know it all" terms. But, for whatever reason sometimes people will feel that they can communicate with their strata managers that way. Isn't that interesting

Reena Van Aalst: Yes that's right. I think a lot of people don't really have much respect for strata managers in general. And I don't mean that in any sort of derogatory way. I just mean that they think that they don't really know what they're talking about. And to also give some clarity for owners, I must admit that some managers really don't know what they're talking about either. And again it goes both ways, so we all have to learn to be respectful. And also as you said Amanda, to approach something in a way that's not confrontational or accusatory. But to basically try and gain an understanding of the legislation before you start making statements, and saying that this is wrong, and this is not what the law is saying. Even though the same motion was on last year's agenda as well.

Amanda Farmer: Yes and there's your skill as a strata manager Reena, that you know inside and out what the statutory motions are so the motions must be included on every notice of annual general meeting, what they mean, so that when you do get these questions, demands, accusatory or otherwise,

Reena Van Aalst: Demands more rather than questions.

Amanda Farmer: You are able to answer them quickly and accurately.

Reena Van Aalst: Yes but I think Amanda, just to summarise, I think every Strata manager knows all the motions for an AGM, so if anything, that's something that we do as managers every year for many buildings. So that's one of those things that strata managers do have generally a lot of experience with. So...Yes

Amanda Farmer: Good, excellent to refresh on that one. Thank you Reena. My challenge for this week relates to the election of the strata committee. And it's just a quick one but I wanted to raise it because I was contacted by an owner who shared with me a situation where their strata manager had told them that the strata manager must chair the meeting with their delegated authority as chair, because all committee members vacate their positions at the beginning of the AGM. And therefore, there is otherwise no chair or any other committee members, for that matter. And hopefully some strata managers who are listening to me say this, jumping up and down saying, "No that is not correct the committee does not vacate their positions at the beginning of the annual

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general meeting, they vacate their positions at the end." And that is very clear in our legislation in Section 35, subsection D. But I was quite shocked to hear that something, which to me, you let me know what you think Reena, is fairly stock standard, basic. This strata manager had incorrectly advised their client and was chairing meetings that they did not need to chair.

Reena Van Aalst: I actually have egg on my face Amanda because I just said in my challenge just about few minutes ago that an AGM explained that most managers do have experience in all the time. So I'm think I'm going to have to take some of that back now after what you've just mentioned.

Amanda Farmer: But this was a shock to me, is that a shock to you..

Reena Van Aalst: Yes.

Amanda Farmer: That a manager wouldn't know that

Reena Van Aalst: Oh definitely, well I think the whole committee election process is a real area where managers don't really understand how it works. I had to say that this is the only main part of the AGM agenda that some managers struggle with. The other thing I think Amanda, I manage to think about also, and I'm sure you've had experience with is the whole committee election process, where people decide the number before they actually decide who the nominees are. So many managers do that in reverse. So it's another common mistake that managers make in relation to the election of the strata committee. But that I must say that your experience of your owner is a first to me. I've never actually heard anyone do that before so... there's always something new I must say.

Amanda Farmer: And this owner was approaching me at a time where there was a bit of conflict going on. So it wouldn't surprise me if maybe the strata manager was being a bit creative there to avoid a certain person being able to chair the meeting. And saying "No, no, no, I have to chair it because..." Oh bright idea you've actually vacated your position at the beginning of the meeting. But it was one of those little pieces of information that takes us 30 seconds to deliver to an owner that just empowered her to be able to go back to that manager and say "No"

And I don't think she was the chair it was somebody else who she wanted "The Chair" to actually be chairing the meeting. Not the strata manager. And she was able to go back point to Section 35 D and say, "You're wrong Strata manager and Mr. Smith from Lot 3, the Chair can actually, and should actually chair this meeting.

Reena Van Aalst: Yes exactly.

Amanda Farmer: Yes.

Reena Van Aalst: And I wonder what happened with any proxies, Amanda, that may have been assigned to the chair as well?

Amanda Farmer: That's the thing, yes. The Chair can be a very powerful position, can't it, when proxies are being directed that way.

Reena Van Aalst: Yes exactly. Yes...

Amanda Farmer: Okay over to your win for this week Reena.

Reena Van Aalst: This was a pretty good one I think for us this week Amanda, we had a general meeting where 2 owners had just by chance, submitted renovations for bathrooms. And we obviously advised them that they needed to have a by-law drafted for this, because of the waterproofing factor of the bathroom renovation. And we gave them a number of lawyers to get proposals from, they happened to go with the cheapest lawyer, who is a strata lawyer. And then when the by-law came back we were a bit surprised at the lack of clauses relating to the indemnification for the owners corporation in relation to any damage to common

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property as a result of the renovation. But unfortunately, it's obviously not our job to advise them as the committee had asked us about the by-laws and what we thought. I mean not that I would give advice per se in terms of anything that is formal but I could just advise them that other by-laws that we have usually have more indemnification clauses that what's being presented.

Another issue was because we also recommended the lawyer there was a bit of an issue for us too, to say "Oh my God what rubbish is this?" I didn't say rubbish but in one case it didn't even refer to the plans, and I said to them "well you need to basically index the plan because I said "there's no way the owner is going to approve it if you don't have a reference to the plans." And the lawyer said to me "Oh but why are you doing that?" And I said "because, trust me I know how the owners are and the more detail you give about the renovation, the more chance there will be of passing it."

Amanda Farmer: Yes.

Reena Van Aalst: I didn't want to refer to the indemnification issues anyways so, that wasn't really my place, it was more to do with just making sure that the plans reflected the work. And as we had expected when we went to that meeting that the owners were not happy with the clauses. And it was lucky that there was an owner there who's a lawyer as well and we had some clauses from other by-laws that were drafted that we were able to help those owners with their concerns, because obviously they were at the meeting. And allow those few remnant clauses to be added so that they could actually have their by-laws passed. And they could actually start doing their bathroom renovations. Which as you said Amanda, before, people think they can get it done straight away. And it's like, no, the secretary's got to call the meeting or the committee has to call, and the secretary is away and the whole thing of getting the...

Amanda Farmer: It's a big process.

Reena Van Aalst: It's just long winded but at the end of the day you realise when it comes to bathrooms especially, so many things can go wrong with water penetration, inadequate waterproofing, damage. So it was really important that the by-laws were passed and they were passed in a more balanced way. Giving both parties rights in sort of any future issues that may arise.

Amanda Farmer: Yes and excellent that you were able to resolve that in the meeting by proposing an amendment to the motion. And that you had people there who were able to assist with that.

The race to the bottom when it comes to the pricing on by-laws is very concerning to me. And I suppose it happens because there's high demand for by-laws from strata managers, from buildings, from lot owners, there are still relatively few strata lawyers who know what they're doing in this space. And often these documents need to be turned over quickly because the owner's requesting them quickly, the strata manager said "I need it this afternoon from an agenda that's going out." There is a danger there that templates are being picked up, precedence are being used that are not properly considered, that are not properly filled out. And there isn't regard to the specific work that's being done by the lot owner.

I think where a client has come to you, a lawyer, directly, for one on one advice, unique, specific to their situation. Then you need to be providing that advice and charging for it.

Reena Van Aalst: Exactly.

Amanda Farmer: And if that means that your by-law is \$2000 rather than \$500 well so be it.

Reena Van Aalst: Exactly Amanda. It's funny cause you should mention that about people wanting to reuse other peoples by-laws. We had a case in a building where someone had undertaken some work and we said, "they shouldn't have done that." It was a bathroom renovation as well and there was another by-law that had already been passed by another owner that had done similar work, although they had done extra work. So they had added additional works and the bathroom renovation into the one by-law. And stupidly this person just went and got that by-law and just changed the lot number and put it through again. And we said "No" I think it was kitchen or other kind of renovations. It's one thing to try to save money, but to try to replicate a by-law and not even

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look at whether or not the actual work is reflected with the work that you want to do.

It was a bit of a worry, but the race to the bottom is sometimes an issue when it comes to trying to get free proposals, with some lawyers saying they'll match the lowest price. And I've had one as a disparity lackingly of \$2000 between one quote and another quote and the high one saying "well I'm going to match the cheapest one" And I'm thinking well..

Amanda Farmer: Really.

Reena Van Aalst: Yes, and I think to myself well why don't you, you know it's either worth the amount you quoted, or you know I just didn't like, sort of, I think when it comes to professional services, or any service that when you start playing this "race to the bottom game" I just think it just ruins professionalism for all parties, for strata managers, for lawyers working in this field.

Amanda Farmer: It makes the client think that you've just picked a number out of the air and put it on a piece of paper because that's what you felt like that day. If you're saying that you'll match any other quote, as a client, I'd be thinking well the fees are either this much or they're not. And if they are this much then I trust that you've thought about it and you know how long it's going to take and what skill and expertise it requires and you stand by that price. That's part of being a professional.

Reena Van Aalst: Yes, or alternatively, Amanda, you quote the highest and think you might be able to get away with it. And then if you don't then you'll charge what it really should've cost. Perhaps, I don't know.

Amanda Farmer: We don't do that!

Reena Van Aalst: Of course not.

Amanda Farmer: Yes well there is definitely a role for templates, many of you listening to this podcast will know that I sell templates on my website. And they are there for a particular purpose at a particular time. And come with all required disclosures about that they are not legal advice, they are not specific to a persons situation. And they're therefore priced accordingly, you would pay about 8 times more to get one on one bespoke drafting from me as a lawyer than you would to get a template off my website. So that really demonstrates the role that templates have to play. And I don't think that owners who are paying for that one on one legal advice should be getting ill considered templates.

Reena Van Aalst: Exactly.

Amanda Farmer: Okay I'm going to move over to my win for this week.

Amanda Farmer: I would like to share that I have been working with a very creative lot owner. I was going to say developer, but actually, I'm not sure that he has a lot of development experience. I think he's just really clever. He owns a couple of lots in a reasonably small development in Sydney's eastern suburbs and he is looking to purchase the rooftop space and build 2 more lots on the rooftop. It will have a beautiful beach view once he has completed his work. And I have been talking to him about the process of purchasing that area of common property from the owners corporation. And making sure that his subdivision plan is properly drawn up and approved by the owners corporation so that he can create those 2 new lots.

Anybody who has been involved in, or looked into the process of using valuable areas of the common property, to add value to their own lots, will be across the different options that are available. You can either purchase the common property as my client is or you can have a common property rights by-law drawn up. And we have talked on the podcast previously about the differences between those 2 processes. I'll put a link to the relevant episode in the show notes.

Reena Van Aalst: Amanda can I ask you, does this owner actually own a lot within that scheme?

Amanda Farmer: Yes he does, he owns a couple of lots in that scheme. And that is a really good question Reena, because what

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I've had to talk through with him is the fact that when he purchases this space he's going to be paying money to the owners corporation. Which the owners corporation may then distribute, if it likes to each of the lot owners, in accordance with their unit entitlements. Now of course, he is a lot owner, so he is actually going to receive part of the purchase price. It will be coming back to him.

Reena Van Aalst: Back, Wow, that's an interesting concept.

Amanda Farmer: Yes, and it's not something I can say, I have come across before at least not to this extent, where he actually owns a couple of lots and it's a small scheme. So when he's doing his figures and he's discussing with owners just as a preliminary discussion what the purchase price is and how much they will be looking to get, he's having to make it very clear that, as an owner himself, he is also going to get some money back. And he's in the process in the moment of working out whether, does that actually mean that I actually need to up the purchase price? So that these owners.

Exactly, but think about that from his perspective if he's upping the purchase price he's having to pay stamp duty on this contract price. So he's going to have to factor in a little bit of extra tax there as well. So a couple of layers to think about in that one, but an exciting project.

Reena Van Aalst: And Amanda why are they actually redistributing, why don't they just keep the money in the capital fund? I suppose if they weren't redistributing the funds then he wouldn't have to add more. It'd just be sitting in the capital fund. And his portion of any future levies would just come out of that pot.

Amanda Farmer: Yes, correct. They could keep the money in the account but I can tell you know it's set to be in excess of a million dollars. So...

Reena Van Aalst: Okay.

Amanda Farmer: And to get this kind of a sale across the line we need a special resolution of course. So we're looking to get support from as many owners as we can. And the best way to get that support, is to say "Hey, this your cut of the action that you'll be getting at the end of the day." So I think it's unlikely that the owners corporation, it doesn't need to, it's a small building, it doesn't have that level of expenditure, it's doesn't have a huge project coming up. Or a fire order or anything like that, the owners do want to be paid out that money from the fund.

Reena Van Aalst: I wonder what the tax implications are for the owners corporation receiving such a big amount of money. I suppose in a sense, I've never really, you know, we obviously have income that we get Amanda, from say, common property rental for other apartments that are, it's unusual, there are some buildings that have apartments that are common property which they can rent out. And obviously, the towering come from leases of communications towers on roofs. But having that income come back in when it's not actually sitting in the capital fund but it's actually being received by individual owners, I wonder what the tax treatment with that? I'm sure that's obviously an issue that has to be thought about by the owners corporation in terms of tax advice too.

Amanda Farmer: Yes absolutely, and a good reminder to owners corporations who are engaging in those processes or involved in those kinds of contracts to make sure that they are getting that advice and that their strata manager is recommending they get that advice. Yes, definitely.

Reena Van Aalst: Yes.

Amanda Farmer: Okay so that's another big week. Anything to add Reena?

Reena Van Aalst: No, all good, and another big week, and just looking forward to the weekend.

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Amanda Farmer: Yes, enjoy and I'll catch you here next time. Bye!

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