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YSP Podcast Transcript: Episode 173. Beware the motion to discuss "general business"

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Amanda Farmer: Hello and welcome. I'm Amanda Farmer and I have with me today the lovely Reena Van Aalst from Strata Central. Hi Reena.

Reena Van Aalst: Hi Amanda, how are you?

Amanda Farmer: I'm doing very well. It is lovely to be here with you today. We have another jam packed episode covering our wins and our challenges. You ready to jump in?

Reena Van Aalst: Sure am.

Amanda Farmer: Let's do it. Your challenge for this week, Reena.

Reena Van Aalst: So an interesting challenges is the reason Amanda, where we have a chairperson in Australia scheme who is unfinancial and has been unfinancial I think for maybe 18 months now and actually hasn't paid, not even a dollar towards their levies. I won't go into the reasons in the sense why this hasn't been followed up, but suffice to say that the AGM is coming up next week and we don't know if he's going to be attending the meeting. Last time he was actually at the meeting, he wanted to chair, even though I'd known the owners were were financial, but there was some issues that had related to the previous managing agent, so he declared everyone to be financial.

Now at this meeting, the question that we're thinking about that could arise knowing the sort of person that we're dealing with is it says that if a chairperson is at the meeting, I go to the manager schedule 1. Sorry, let me go to Schedule 1, Part 3, General Meeting Procedure, Clause 12, chairing of meetings. And it says in legislation, chairperson to preside. The chairperson in the owners corporation is to preside at any meeting at which the chairperson is present. Then it says that in the absence of he's not there, it says the presiding member where the chairperson absent. So in the chairperson's absence from a meeting, the persons present at that meeting and entitled to vote on motions submitted at that meeting (other than unfinancial owners) may elect one of their number to preside at that meeting. And the person so elected while also presiding taken to be the chairperson of the owners corporation.

The question, Amanda is by another one of the committee members who is very concerned that perhaps the chairperson will turn up to the meeting being unfinancial. He won't be able to vote, but can he still chair the meeting? And we can't find anything in the legislation that doesn't say that he can't not share. It just says that if he's present, it's to preside at the meeting where the chairperson's present.

Amanda Farmer: Yes.

Reena Van Aalst: What's your view on that Amanda?

Amanda Farmer: Yes, look, I agree. There's nothing in the legislation that I'm aware of that prevents an unfinancial chairperson from chairing a general meeting. Of course the chair cannot vote in their own right if they are unfinancial, but there's nothing that says that they cannot chair the meeting. It is interesting, maybe a little bit odd as you read out there right now Reena, that if the chair is absent and the meeting is to elect one of their number. The way that I read that part of the legislation is that they have to elect someone who is in turn entitled to vote and therefore someone who is financial. So where you are substituting a chair because of the actual chair's absence, you have to substitute that with someone who is financial but the actual chair themselves, if

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they're there and the ready to chair, they don't have to be financial.

Reena Van Aalst: Yes, it's an interesting anomaly. Isn't it Amanda? I'd say this is a similar one where the agenda of a strata committee meeting for schemes less than a hundred lots has to go on the notice board, but not necessarily when the minutes are actually issued they have to go to every single owner. So I think this is another one of those sort of anomalies that perhaps where they weren't really thinking at the time when they were writing the legislation that that could be interpreted as you have said. And I agree that doesn't say they have to be financial.

Amanda Farmer: Yes. Of course if they are attending a strata committee meeting, as we know, strata committee members at strata committee meetings do need to be financial to vote.

Reena Van Aalst: That's correct. Yes. And that's something is a great set of addition to the legislation, Amanda, because there are many people that you see get onto committees that weren't even financial. A financial owner would elect them. They get on and then they could be unfinancial for the rest of the duration of their term. And then the same cycle could go on and on even though perhaps they would pay, they would pay like in dribs and drabs and it wasn't really, I think a fair thing I think for owners who aren't financial to perhaps be taking carriage like directors of a company. I mean, if you're not financial, that doesn't apply for directors, but I'm saying in this case, Amanda, I think people should be financial. And that is a good welcome change to the legislation.

Amanda Farmer: Absolutely. I agree. But I do think that's the answer to your conundrum there Reena with an unfinancial chair. They can chair the meeting if they are the actual chair. And if they're absent and the meeting is choosing someone else to chair, then that someone else must be financial.

Reena Van Aalst: Yes. Thank you Amanda for that. I really appreciate it.

Amanda Farmer: No worries. I'll put a link to schedule one in the show notes for the episode so you can go and check out that wording for yourself. If anyone has a different view, do let us know. We're always open to receiving different opinions. I always say that's why there's so many lawyers in the world. We all have a different take.

Reena Van Aalst: I think some people would say there are other reasons why there are so many lawyers in the world.

Amanda Farmer: I couldn't possibly imagine what those reasons would be Reena. All right. My challenge for this week also relates to general meetings and the subject of general business. Now I have seen a few agendas that have a motion that somehow in some way refers to general business. For example, that general business be discussed that any general business be raised. And the question that was asked of me recently is, "Amanda, is this legal? Can we discuss general business? What does that mean? What happens when we discuss general business and make decisions about certain things that were not actually particularised on the agenda? What is your guidance on this topic?" Do you have a policy about general business on meeting agendas Reena?

Reena Van Aalst: That they don't exist?

Amanda Farmer: Uh-huh, nice.

Reena Van Aalst: However, sometimes in some buildings that perhaps have don't have an active committee or the committee doesn't meet regularly, Amanda, people say like, "We only get together once a year. Can we just have a discussion?" So we will add at the end of it, like a heading, general discussion, and we'll just say this was discussed, but there's no resolutions. There's no agreements, just a discussion basically, just noting perhaps some of the concerns of owners, but it doesn't really have any legal binding as such as just an opportunity for some owners to be able to vent their concerns or raise some matters that perhaps the committee hasn't thought about and they would like the committee to consider in the next term of the new committees tenure.

Amanda Farmer: That's certainly the approach taken in my own building. We often don't see all owners throughout the year and

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maybe some investor owners who only get involved when it's AGM time and there are things that those owners want to raise and say, "Hey, why don't we look at this? Why don't we look at that?" And I think it's important to have that time for discussion, but to make very clear that we can't actually have formal resolutions because there haven't been motions on the agenda dealing with those issues. But what we can do is, as long as it's within the power of the strata committee, to consider these issues, then that can happen at a later strata committee meeting.

Amanda Farmer: If it's something like, for example, somebody says, "I'd really love to have CCTV in the building," well, we know that that's an addition to common property. We need a special resolution for that kind of installation. That can't be decided if it hasn't been on the agenda. But the strata committee members might notice that that has come up in the general discussion and then spend the next 12 months getting quotes, investigating some options for CCTV and then putting forward the formal motions at the next annual general meeting. So I do see that value in general business, but I think it's important to make very clear that binding resolutions cannot be made.

Reena Van Aalst: And the other thing also Amanda to note, in your example is that they would have to be a budgetary allocation as well for that expenditure. So again, that's why the committee can go away, get quotes, put the relevant motions, and also make an allocation in the budget to spend the money on that. So that owners know is in addition to the resolution, which in this case would be an obvious one. But sometimes it can be things where you don't need a special resolution, Amanda. But any changes or anything that owners want to have considered, the committee will have to then get quotes and add that to the budget to be considered at the next AGM.

Amanda Farmer: Yes. Excellent. So that is general business. Let's move into your win for this week, Reena.

Reena Van Aalst: Yes, this is a really satisfying win for me, Amanda, because we've had a scheme where they weren't happy with the building manager. It was one of those appointments that occurred early on and unfortunately it's been a number of different personnel and it just hasn't worked out due to I think any association, with the original owner can also perhaps cause some issues with any building management company. But anyway, so it was I think a 3 or 4-year term and now we're into the second year and we just had a negotiation for an early termination. And it's been really working well even though we've agreed on a date, the building manager is doing an excellent job like you would think that he wasn't leaving and the company, obviously, it's been supportive. And I just think sometimes it's always good for people to leave on a positive note. I think Amanda you and I discussed this when it comes to strata managers resigning or being terminated.

In a sense you still should offer your services and be professional, even though that relationship has broken down. And in this case it's particularly common this has happened. But I mean in a sense I will still recommend them in the future because of the way that they've conducted themselves in this particular event where there's been issues. We had a discussion and since obvious that the committee just was heavy for them to resign and they agreed to resign. And now we can both work together in terms of the exit process and then arrange for some handover with the new company that's going to be appointed. And I think it's just one of those things that it's just very rare to say, but when it does happen, Amanda, it just shows you if people could just sort of think differently about terminations or ending relationships ...

I mean, I think as human beings, we all have these problems sometimes where you know there's a blame issues and how dare they and they're unreasonable. And all those things that are usually unbalanced perhaps correct. But sometimes it's just best to walk away and just say, "Okay, relationship has broken down. There's no way of resurrecting it. Let's move on." And move on in an amicable way. And I think that to me as a managing agent, it's very rare for me to see that. And when I do see it, I'm just sort of thinking, "Wow, at least you know it can happen."

Amanda Farmer: If there's one thing you think that you did as managing agent or the committee did or the building did to make this a smooth process, what would that one thing be that you'd want to share?

Reena Van Aalst: Yes, I think when we had the meeting, I think that I tried to make it obvious that even though perhaps there are

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issues in relation to some of the committee's conduct, that overall there were issues on their side. And even though there's not one thing we can all sort of say was the cause, it's just that now our relationship is just no longer going to work out for many reasons that perhaps weren't even the fault of the building manager. That sort of perhaps they just became embellished in the whole timeline of events and also they had some personnel issues. And again, that could happen in any company, but when people aren't happy with the services that's being provided for whatever reason, then those smaller things become magnified.

Reena Van Aalst: And I think also for the committee where there's a lot of defects and issues so the committee also has a lot of pressure on it from owners. So I think there's been a whole mirage of issues that in a sense contributed to where we are. But I think by having sort of a conducive sort of relationship, a respectful relationship and saying, "Okay, I still work together with them as if they're not going and they do the same with me," which is a really good thing. So in a sense they feel like they're valued and vice versa. So I think in a sense, if we can make the best of a bad situation that's ultimately what's going to work out for our clients and our owners and our communities. Is it's getting the best outcome in a bad situation and trying to do your best not to sort of antagonise or become more adversarial.

Because sometimes I've noticed and I think in our newsletter we issued just yesterday Amanda, we have come across schemes where you would think the manager actually is a committee member for the way they ... They actually act as if they are a committee member. And I'm thinking, "Hang on, you're an agent. Your role is not to perpetuate. You're not a committee member." And I think sometimes some strata managers, they align themselves with people who they believe are in their corner or whatever and therefore their whole conduct becomes towards the other party, becomes adversarial and very-

Amanda Farmer: Unprofessional.

Reena Van Aalst: Exactly. So yes.

Amanda Farmer: Yes. Some very important reminders there. Well, it's wonderful to see what could have been a very difficult conflict-ridden process run smoothly for you, Reena. And I'm sure there's a lot that you've learned from that process. And certainly in what you've said there, there's plenty of takeaways there for other buildings and other managers. So a nice win.

Reena Van Aalst: Yes. Thank you Amanda.

Amanda Farmer: The win that I would like to chat about today relates to an upcoming event. This is an event that only happens every 2 years. It will be known to some of you, and I'm sure some of you are already registered. It's happening in about a month's time and it is the 2019 Griffith University Strata Title Conference. This is happening on the Gold Coast from the 4th to the 6th of September. And as I said, it only happens every two years, but it's always a fabulous event attended by managers, by industry experts, stakeholders. We don't get too many owners, but owners are absolutely more than welcome to attend.

Just looking at the program, we're going to be covering off things like the future of the residential market, diversity and inclusion, crisis management. Looking at the fallout from the combustible cladding crisis. We're going to look at approaches to aging buildings and we're of course going to be doing lots of networking, lots of socialising. I will be there. I will be on stage with my fellow lawyers from around the country giving a legal update, which we're very much looking forward to. It'll be a great event. So I'm going to put a link to the registration page for that conference in the show notes. If you're not already registered, I would love to see you there.

Reena Van Aalst: One thing I do enjoy is the international focus as well, that there are usually speakers from other parts of the world that give us some insight into how other countries deal with some of the issues that we're all facing when it comes to apartment living. And are there any speakers that are on the program for that?

Amanda Farmer: Yes, we do have an international case study on the program. And look, I keep saying we, I am assisting with some of the organising of this. I'm not officially on the organising committee, but hey, I do know those who are. And they're putting

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so much work into this. There is an international element for sure. We'll be looking at a case study, yes.

Reena Van Aalst: And something that is also I think interesting about the Griffith University Conference, it brings a different perspective I think. And also, I think you mean ... I mean, I met international strata managers from other countries, South Africa that we're still in touch with via email. So yes, I think it's a great way to meet different people as well, Amanda, apart from your normal state conferences or even the industry conferences. It's a new sort of a diversion to the normal sort of content.

Amanda Farmer: For sure. I don't attend too many strata conferences these days. It's hard to fit them all in, but this is certainly one that I do not miss.

Reena Van Aalst: Yes, I'd love to go, but I'm just going to be away the following month.

Amanda Farmer: No problem. I will do my best to give you a wrap up if I can.

Reena Van Aalst: Thanks Amanda. That'd be great.

Amanda Farmer: All right, well thank you very much for your company again this week Reena. I will look forward to catching up with you very soon. Enjoy your week in strata.

Reena Van Aalst: It's been a pleasure Amanda. Talk to you next time.

Amanda Farmer: Bye.

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