

Publication Date: 20 August 2019
YSP Podcast Transcript: Episode 175. Parking mix up: why is my car space for disability parking?

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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 know that you are struggling a little bit at the moment, Reena. Can we share this?

Reena Van Aalst: Yes, definitely. Well unfortunately last week, Amanda, I was walking down the stairs where I live. It was slippery and I just went for a bit of a straight fall and broke the bone above my ankle, the distal fibular as they call it. So at the moment I'm actually using crutches and a knee walker to get around, and hopefully in about 10 days I'll be able to walk on my boot.

Amanda Farmer: You poor sweetheart. I have seen you hobbling around, and we were just saying before we turned the recording on that everything is taking about 5 times longer for you. You have my sympathy.

Reena Van Aalst: Thanks, Amanda. Someone like me who's a really fast person in everything that I do, that in itself is a mental struggle.

Amanda Farmer: Yes, you'll get there. Maybe it'll do you some good to slow down, take a breath-

Reena Van Aalst: Yes, exactly.

Amanda Farmer: ... and smell the roses.

Reena Van Aalst: Exactly. I achieve less in a day but at least, you're right, it forces me to slow down.

Amanda Farmer: Yes, you're on normal person speed now, Reena. All right, let's jump in. Aside from your broken foot, what has been challenging you this week in strata?

Reena Van Aalst: Well this is an interesting case, Amanda, which I have had before, but this is a bit of a different twist. So it relates to a strata scheme having visitor parking, and in this case disabled parking. So basically there's 2 levels of car park in this particular building. The development's only a number of years old and they actually have the spaces marked out in blue with the disabled sign on it.

Unfortunately, due to some issues relating to repairs and maintenance, some of the car spaces have had to be blocked off and people can't use their car spaces at the moment for some repairs, and therefore some people who are genuinely disabled who have those spaces that they can't use have now been using the disabled spaces.

But unfortunately, those disabled spaces are actually owned by other people. They're not actually disabled spaces. People say that's our car space. And on the strata roll, it actually does show that, Amanda. On the strata plan sorry, it shows that they are car space slots on the strata plan.

So, this particular lady whose husband is quite unwell and obviously can't park outside the building and has to park inside, she's been getting breach notices from the building manager saying you can't park here because these are owned by people, it's their

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private spaces, and they've been getting complaints from those people when they come home at night that this other vehicle is parked in their space. The lady then contacted, the lot owner contacted council and they came down, and they've written to me and they said, well basically these spaces have to be available. And I said, well, can you please confirm that the DA contains disabled car spaces? And they said that's correct. There's 6 spaces that are earmarked on this level and two spaces that are earmarked on another level, and therefore you've got to enforce that particular condition.

In another scheme I used to manage many years ago, the developer had 3 visitor car spaces, and what he did was rather than selling them off as lots, he gave exclusive use rights to particular owners for those visitor car spaces. So they actually weren't theirs on title, but they pretty much were theirs through this exclusive use license arrangement.

So in this case, Amanda, what is your advice in terms of what the owners corporation can do when people have been sold lots on title that basically give them a right to park in a particular space? Now the spaces are very small, they're not the normal ... You know when you go to a shopping centre, usually visitor disabled car spaces, Amanda, are usually larger than the regular ones. I'm not sure that's a criteria for disabled parking, but by and large that's been my experience.

So these ones are actually just normal size. They're actually not bigger than what they need to be. They're like the size of any other car space lots. So, what's your advice?

Amanda Farmer: So these disabled car spaces are marked on the strata plan as being part of a lot. Okay. And people have purchased their residential lot believing that they have access to a car space because the car space forms part of their lot.

Reena Van Aalst: Yes, because this development was sold off the plan.

Amanda Farmer: Okay. Yes. Sure. They are then car spaces that are painted in blue and marked disabled, and when did the strata plan get registered?

Reena Van Aalst: In early '17.

Amanda Farmer: Okay. Is the developer still around?

Reena Van Aalst: Yes.

Amanda Farmer: They have painted these spaces blue because the DA required them to have X number of disabled parking spaces.

Reena Van Aalst: That's correct.

Amanda Farmer: Have you seen the DA consent?

Reena Van Aalst: No. We've been trying to get a copy of it.

Amanda Farmer: Okay.

Reena Van Aalst: But this council originally said that it would take 20 business days and now we got another email to say it's taking an extra 10 business days. So we actually asked the council officer that had emailed me to provide me with a copy of the DA so we can have a look at that.

Amanda Farmer: Yes, and see what the condition is exactly and whether it nominates which particular spaces need to be set aside for disabled parking.

Publication Date: 20 August 2019
YSP Podcast Transcript: Episode 175. Parking mix up: why is my car space for disability parking?

Amanda Farmer: It may be that the developer is in breach of the DA conditions, and you can raise that with the council because they were supposed to provide parking in a certain area and they-

Reena Van Aalst: Yes, exactly.

Amanda Farmer: ... haven't done that. That could be what's happened. Otherwise, I wonder if having these spaces painted blue is a building defect.

Reena Van Aalst: Or we can add that to the list of all the others that are present at the moment.

Amanda Farmer: Yes, if you talk to the developer, that's the person I'd be talking to and say why is my car space painted blue and marked disabled?

Reena Van Aalst: It's really strange because that's what you would've thought, Amanda. But I'm thinking, because this building is highly tenanted, I think that because I think tenants probably don't realise I was told to park here, therefore they don't particularly worry about whether it's supposed to be disabled or not.

Amanda Farmer: Yes.

Reena Van Aalst: And who knows, when these owners were given inspections before settlement, were they still not not blue and then after they went and painted them blue?

Amanda Farmer: Exactly. Wow. It sounds like a developer taking a shortcut to me, and I'd be raising it with them and getting your hands on the council conditions.

Reena Van Aalst: Yes. I'll keep you posted on that, Amanda, what happens once I receive the DA, but I just thought that would be an interesting one. I've seen visitors spaces through exclusive use arrangements and license agreements, but this is, I think, a new one and I wonder how that council has to actually enforce, because in a sense-

Amanda Farmer: For sure.

Reena Van Aalst: ... they're saying to me, well this is a DA approval condition. You've got to enforce it.

Amanda Farmer: Yes, but I'm pretty sure the DA condition didn't say ... Well, let's put it this way. The building would be approved for a certain number of lots with car spaces.

Reena Van Aalst: Yes.

Amanda Farmer: And then there would have been, in addition, a certain number of disabled car spaces. So either way, neither of those requirements have been met.

Reena Van Aalst: Yes.

Amanda Farmer: Okay. Gosh, you come up with some good ones, Reena. Just when you think you've heard it all.

Reena Van Aalst: Exactly.

Amanda Farmer: All right. Definitely let us know how that one plays out. Very interesting. My challenge for this week relates to the concept of a building's financial year, and we have talked about this a few times recently on the podcast, Reena, talking about accounts and budgets and approving accounts for the financial year.

Publication Date: 20 August 2019
YSP Podcast Transcript: Episode 175. Parking mix up: why is my car space for disability parking?

Amanda Farmer: In the course of this discussion, I have had one of the members inside the Your Strata Property membership community ask a question about this term "financial year." Where does it come from? Is it in the legislation? Why do we all operate as if this is some fixed, well known concept, a building's financial year, when as far as this member could see, and I've had a look and I can't find it, it's actually not set out in our Strata Schemes Management Act at all. Do you have any thoughts on this, Reena?

Reena Van Aalst: Well, I think it's an arbitrary date that's been set as to when the developer had sold the required number of lots when the first AGM is held, and then obviously the accounting period will start usually at that time. So the financial year is set once the first AGM is held and levies are then being raised from a certain point in time. So they have to start at one date and then finish 12 months later.

Amanda Farmer: Well here's the thing. Let me backtrack, because I believe this term is mentioned once in our Strata Schemes Management Act and that's in relation to the convening of the AGM. Section 18 of the Strata Schemes Management Act: "An owners corporation must hold an AGM once in each financial year of the corporation."

Now this came in when our new legislation started in 2016. That is the only place that I can find that term used, and that's why, in my view, it becomes important to understand how the financial year is set, when it commences and whether it can be changed. And we've talked about that before as well, Reena.

Reena Van Aalst: Yes, that it can be.

Amanda Farmer: Yes, it seems odd to me that you would have a requirement that you must hold your AGM once in each financial year of the corporation, but there is otherwise no guidance around when the financial year starts.

Reena Van Aalst: Yes. So basically the financial year is set when the first AGM is held and levies are raised. I can give you an example. Let's say that your first AGM is held in the middle of, say, January then you have probably have levies 3 days notice for levies so it would probably start January then you have probably 3 days notice start 1st of March. Therefore, in a sense, 1st of March becomes the beginning of the financial year and then in February of the following year. So that's sort of how it's been set. But there's nothing to say that you can't change the actual financial year, which we've done on many occasions.

Recently we had a building that wanted to change their year so that they have their AGM a bit earlier in the year. So we now have a 9-month financial year period rather than a 12-month one.

Amanda Farmer: Yes, and I think this becomes relevant where buildings are not having regular annual general meetings and owners getting concerned about budgets and levies and money that's going out that's not in accordance with a budget that's been approved, and running out of money because levies haven't been raised.

When the owners go to look at this requirement for when AGMs must be held and see this term "financial year", it's quite natural, I think, to then ask the question, well, what is our financial year and how do I find that out? How is that set? When was it set?

Not having that guidance in the legislation I think is unfortunate and confusing.

Reena Van Aalst: Yes, I think it is, Amanda. But I suppose, in any sense, like in Australia we have a financial year ending 30 June, in the US and Europe it ends 31 December, and I suppose for strata schemes, because it's not defined as such, it can be at any time really. Also the other thing I think is important to note that sometimes people's levy cycles are out of sync with their financial year end. So for those that sort of don't really understand what I'm saying, you might have a 30 June year end but your levies start from September, and therefore the levies, instead of being 1 July to the end of September, 1 October and then 1 January and then 1 April so that all the levies are raised in that financial year, when you're doing your budgets it all lines up, we have one that has a 30 June year end that we've inherited and it goes from 1 September and then it goes from 1 December, so there's 2 months that it's going to be out of whack with our financial year end.

Publication Date: 20 August 2019
YSP Podcast Transcript: Episode 175. Parking mix up: why is my car space for disability parking?

Reena Van Aalst: So what we're going to do in this particular scheme is actually have one of the levy quarters bjust being for 2 months so that we can line it up, Amanda.

Amanda Farmer: Yes.

Reena Van Aalst: Again, that causes confusion with people because the levy's going to be less, it's pro-rata'd. And it's interesting to note that many people don't have very much financial knowledge in their own lives in terms of how things work, let alone when we try and change your ends and try and change levy cycles. It does cause a lot of confusion, as you've said, Amanda, because this whole notion of what is a financial year isn't ...

People understand in their own life you've got to do your own tax. You know, tax year end's 30 June, but when it comes to financial year and you have until May ... I think for people you can lodge your tax return by May the following year. So, in a sense, I think we're doing that now in strata. It's sort of following the real world. You don't have a set time to lodge.

Amanda Farmer: Yes, and I think you've hit the nail on the head where people may not be as financially literate as accountants or other professionals may be. These things are very ...

Reena Van Aalst: Complicated.

Amanda Farmer: Yes, and quickly become confusing. Anyway, and we've just done our bit to make it more confusing.

Reena Van Aalst: Exactly. Sorry, everyone.

Amanda Farmer: But if there is comfort in the knowledge that we too are confused and we don't have the answers and we're looking things up and trying to find them for you, then happy to provide that level of confusion/comfort.

Reena Van Aalst: Yes, definitely, Amanda.

Amanda Farmer: All right, let's move on to lighter things. Do you have a win for this week, Reena?

Reena Van Aalst: Yes, so last week we were appointed to manage a new scheme, and basically they've given me just a rundown of the matters that are actually happening. We don't take over till a few months' time, but they've actually got a draft statement of claim that's being served on them.

So basically this particular owner is threatening to file this particular statement of claim against the strata committee, and I said, well, you've got to put this forward to your insurance broker. Ask your manager to do that because there's actually a legal defense claim policy within your insurance that most strata schemes now have. So they were quite surprised that this was actually available and that they weren't even aware of it.

I mean, this is, I can see, a very litigious building, and I think people giving you a draft statement of claim saying that if you don't do what I want, if this person doesn't resign, then we're going to file it. It's like, oh, okay, that's a nice way to start looking after a building.

Reena Van Aalst: But I think a lot of people don't understand that there is a policy when a lot owner does sue the owners corporation that is available where the insurer then would have to obviously approve the lawyer. Sometimes they have a panel of lawyers that they use or you can put forward your own lawyer, Amanda, and they'll say, okay, that's fine. Can you make sure you send us the bills? We want to know what the strategy is that's been put forward by the lawyer.

So at least that's one thing that the owners corporation, obviously you can take some comfort with, but it's important that your strata manager is aware of it. So for managers out there and lot owners, I think most policies now would have this legal defense claim.

Publication Date: 20 August 2019
YSP Podcast Transcript: Episode 175. Parking mix up: why is my car space for disability parking?

Amanda Farmer: Yes, it is something that I, too, see buildings and sometimes strata managers forget about until I might get involved and say, "Hey, this is a defense position we're taking here. Do you have a policy that would cover this? And if you're not sure, check in with your insurer." And often they are pleasantly surprised that they can get some money back for their legal fees. So, very good reminder.

Reena Van Aalst: It's funny, Amanda. One of my colleagues was telling me, from another company, that they had a situation like this where obviously they put the insurer on notice about this particular claim, which ended up being lodge, and when the bills were put forward by the lawyer, they said that the bill was three times the amount that any other lawyer would charge that's on their panel. And their panel's quite, I mean, it's quite a big insurer and quite a lot of lawyers.

So I think sometimes lot owners and strata committees are a bit shocked because they've engaged the lawyer beforehand not realising that that is covered under the claim. But I think also another bit of a shock is when they find out that their lawyer is basically overcharging. In terms of being 3 times more than any other lawyer for the same type of thing I think should ring alarm bells.

Sometimes I think strata schemes and owners corporations feel that they're taken advantage of when they're in this situation when they are being sued by a lot owner because they don't really have any other choice but to actually defend the claim or settle, depending on what the issue is.

But sometimes when people are vulnerable, there are people that sometimes take advantage of owners corporations. Being a bigger entity, well they can afford to pay because it's not one person paying, et cetera. So something to think about, I think, when owners corporations and strata committees are looking at their lawyers and selecting a lawyer to represent them.

Amanda Farmer: And certainly more competition in that space I think is a very good thing, and I think probably over the last 10, 15 years or so, we have seen more lawyers enter the space and providing that range of choice, whereas maybe 20 years ago there was only a handful to choose from and you chose and worked with the lawyer that your strata manager used for all the same buildings.

But I think we're seeing owners become far more educated and understanding their options, jumping on Google, doing some searching and finding someone who they feel comfortable with that they can trust and putting their best foot forward.

Reena Van Aalst: Yes, that's exactly right, Amanda.

Amanda Farmer: Okay. Well, my win for this week is also about insurance, and I'm coming back to what I had raised as a challenge way back in Episode 165. At that time I shared that I was having great difficulty on behalf of a client getting an insurance claim accepted and paid for a rather serious flood event. So there'd been some major flooding towards the end of last year. My client's apartment had been completely flooded, damaged contents, damage to structures as well, and they'd made a claim both on their contents insurance and the owners corporation had put through a claim by the building insurance.

When I was talking about this in Episode 165, I said we have been waiting about 5 months and we have not got a satisfactory response from the building insurer.

I was at a bit of a loss as to how somebody could be put in that position for such a long time waiting to be, effectively, reimbursed, because they had done a lot of the rectification themselves so that they could move back into their home. And I'm happy to announce today that the strata insurer has come through. We have had a decision and indemnity and a payment has been made.

What I wanted to highlight is the fact that, in my view, this only really happened because a new broker came onto the scene. This was a new broker who came along with a new strata manager who was appointed to the building, and this broker, for whatever reason, was able to do things that the previous broker could not do and got the strata insurer moving and got a decision on the claim and payment made rather promptly.

Publication Date: 20 August 2019
YSP Podcast Transcript: Episode 175. Parking mix up: why is my car space for disability parking?

Amanda Farmer: So I hate to say it, but it's who you get, who you know, whether you've got somebody competent and professional on the other side helping you or whether you've got someone who's just dropping the ball and not picking up the file, which I can imagine is incredibly frustrating for not just managers but for owners. My clients had me there helping them, but they were paying me for that so that they could get that across the line.

Reena Van Aalst: That's very interesting you should mention about insurance brokers, Amanda, because you were saying earlier that there is a proliferation of new strata lawyers that wasn't prevalent back 15 or 10 years ago even, whereas now there's many to choose from.

I think that that space has also changed for insurance brokers, so now when you go to an industry conference, before you had lots of lawyers having stalls, now you have insurance brokers. So that space-

Amanda Farmer: True.

Reena Van Aalst: ... again has changed, and I think what you're saying is so important because getting a quote annually, I know it may be difficult in some cases, but overall I think for most buildings that don't have many claims or they're pretty straightforward, the broker's job would be quite limited to the activity at that time at the renewal period.

However, the main thing that I think one should look for as a strata committee or strata managing agent when looking at advising on which brokers perhaps owners corporations should consider, is really the claims management, because the claims management is where all the work is.

You might have 2, 3 claims in one year, you might have a huge claim, you might have the claim that you were talking about, Amanda, where this prevented the owners living in their apartment, and just changing brokers, someone who's got the tenacity, the knowledge and also, I think, fighting for their client.

Amanda Farmer: Yes. Very good point there, Reena. I think we are seeing that change in the sector and I think it's a good thing. Similar to lawyers, brokers, more competition, better people, and being focused on the needs of the client and remembering who the client is is such a key point.

Reena Van Aalst: Exactly.

Amanda Farmer: So, that's the win for this week from my side. Anything else you'd like to add, Reena?

Reena Van Aalst: No, Amanda, just trying to get through the day with my ailment. Or I wouldn't just call it an ailment, with my current disability. But-

Amanda Farmer: Yes.

Reena Van Aalst: ... makes you actually think about people who can't get on public transport or stairs are a challenge. Obviously I'm young and fit enough to be able to use crutches, but I think about older people trying to get up my stairs, for example. My God. It takes me nearly 15, 20 minutes to get up there.

Amanda Farmer: Puts it all in perspective.

Reena Van Aalst: Yes, exactly. So I think we need to think more about people that have disabilities and can't access stairs and other things that we just take for granted.

Amanda Farmer: Yes, we just won't steal anybody's car spaces in the meantime.

Publication Date: 20 August 2019
YSP Podcast Transcript: Episode 175. Parking mix up: why is my car space for disability parking?

Reena Van Aalst: Yes, I'm thinking about those too.

Amanda Farmer: All right, I'll catch you next time, Reena.

Reena Van Aalst: Okay. Bye, Amanda.

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