

**Publication Date: 17 September 2019**  
**YSP Podcast Transcript: Episode 179. How to properly calculate meeting notice periods**

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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 great. I am looking forward to diving into our wins and challenges as we like to do every couple of weeks. How about you?

**Reena Van Aalst:** Yes, it's the same actually. There's been quite a few unusual challenges, which I'm looking forward to sharing with you, actually.

**Amanda Farmer:** Oh, okay. Let's jump in. Hit me with your challenge.

**Reena Van Aalst:** Yes, this is... we'd a tour of our building about a month ago, and the first thing that happened, actually, I think on the day we actually were receiving the books and records, was that there was an email sent to us, a lawyer's letter, basically suing the owners corporation for not attending to the repair and maintenance of common property, being within that lawyer's lot.

**Amanda Farmer:** Right.

**Reena Van Aalst:** At first it was unusual, because I wasn't really sure, Amanda, if that person was a lawyer acting on behalf of their client, or if it was actually the lawyer himself. So, I was told by the strata committee that he actually is a lawyer, and he uses his own letterhead to communicate, which is all fine.

Anyway, so after some time, we tried to email the insurance broker straight away, and we had difficulty just trying to get the attachments through, but that was only the minor part of it.

**Reena Van Aalst:** So, when we finally were able to email the claim, in various numbers of emails, the claims manager wrote to me and said to me, "Oh, well, which is it? Is it a office bearers claim, or is it a public liability claim?" And I'm thinking, well that's not for me to say. My view is, just to send you the claim. As a broker, you have the policy wording for the particular policy that's held by the owners corporation, and it's for you to tell me. And she said, "No, you've got to tell me." It's like, well anyway.

**Amanda Farmer:** Right.

**Reena Van Aalst:** So, I went back to the strata committee who had already had engaged a lawyer, just prior to our carriage of the strata scheme. And he said to me, "Oh, can you provide me with this to be a currency and the policy wording, which we did." And they said, "Oh, there's obviously going to be a fee associated with this part of the advice and it's going to be \$1,000."

And I'm thinking that's fair and reasonable, but, why is the owners corporation and having to pay, when, I believe that there's the duty of having a broker, where the broker is the intermediary between the insurer and the owners corporation, and is there to give advice and to fight on behalf of the owners corporation, in respect of advising, in the first instance, do you have a claim? Under what policy should the claim be submitted under?

So, I must say, I've dealt with some quite reputable insurance brokers in my time as a managing agent. And, sometimes, when you

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take on new schemes, you obviously inherit whatever broker they're currently with. But, I must say, in all the years that I have been in strata, which is nearly 20 now, I have never had someone telling me to tell them what policy I should be claiming against.

**Amanda Farmer:** Yes. How frustrating. So just to clarify, for our listeners who might not be across this, whilst the owners corporation will have a policy of insurance, there'll be a number of different categories under which you might be indemnified, and that you can claim under. For example, you've got your building insurance, you've then got your Office Bearers Liability, then your Public Liability, and maybe even your legal defense coverage. So, if you are being sued by a lot owner, you might be able to claim under that legal defense category.

But, I agree with you Reena, it should be the broker who can direct you to the correct part of the policy, and submit the right claim to the insurer.

**Reena Van Aalst:** Yes. And, for any of us who are familiar with these PDS, they're quite lengthy in volume, and they're quite, in a sense, they're a legal document, and really, you rely on the expertise of insurance brokers. Who are also, mind you, paid a commission when they procure your insurance for a strata scheme. The strata managing agent may get a commission if they're a distributor, or an authorised representative. The broker also gets a commission and fee for putting the insurance through.

So, it's not as if they're not being remunerated for their expertise. So yes, it's an interesting one. And, I'd be interested to see if any of our listeners, Amanda, whether they're managing agents or a lot owners, have ever had this, happen to them, and if they have, what did they end up doing? Because we don't want to, as I said, I don't believe the owner's corporation should spend money finding out.

**Amanda Farmer:** Yes.

**Reena Van Aalst:** And that's why, I think, as an agent, I think it's important to use a broker, because the broker is there to give you the advice-

**Amanda Farmer:** Yes.

**Reena Van Aalst:** ... so that you can help your owners corporations in your committees as much as you can.

**Amanda Farmer:** Well, this building might be using a different broker when the renewal comes around.

**Reena Van Aalst:** Yes, they've already intimated that.

**Amanda Farmer:** Okay. Yes, we've talked about it a few times on the podcast, the role of brokers, how we do see that part of our sector changing, with a lot more competition in the area. We've chatted to a couple of brokers on the podcast, and definitely the good brokers, I think, see themselves in that advisory role, recognise that their client is the owners corporation, it is not the insurer. And, you are there to assist, advise where appropriate, and do a good job. And, if they're not, then the buildings will vote with their feet.

**Reena Van Aalst:** Exactly.

**Amanda Farmer:** All right. I'll move into my challenge for this week, if that's okay. I want to have a chat about the notice period for general meetings. Now, in New South Wales, many of you will know that we need to give 7 days notice before we hold our general meeting. That means, we've got to be sending out our agendas, letting the owners have them for 7 days, and then we hold the meeting.

**Amanda Farmer:** Now, our legislation doesn't say business days, doesn't say clear days, it simply says, 7 days notice. And that is

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in Schedule 1, to our Strata Schemes Management Act. It's in Clause 7 of Schedule 1, "Written notice of a meeting must, at least 7 days before the meeting, be given to each owner."

**Amanda Farmer:** Now, I was chatting to a strata manager very recently, who said to me, that they were going to send the general meeting notice out on a Monday, and then they were holding the general meeting the following Monday.

**Reena Van Aalst:** What?

**Amanda Farmer:** And I said, "Hmm, is that 7 days notice?" And the strata manager said, "Yes, I'm sending it by email. So they will get the notice today, being Monday, and I will hold the meeting the following Monday." And I said, "Oh, I think you're pretty close there, but, I think you're one day short. Because, when we're calculating this 7 days notice, we don't count the date we're sending the notice, and we don't count the day of the meeting."

Now, this strata manager didn't agree with me, so I ended up looking up the law and I said, "Look, it's not in Schedule 1, that we don't count the day of sending the notice or the day of the meeting, where it is, is in the Interpretation Act, the New South Wales Interpretation Act, Section 36, where we have a piece of legislation that might not be clear about how we calculate time, we look to Section 36 of the Interpretation Act, and that tells us that, if a piece of legislation sets out a time period, you don't count the actual event that the time period is identifying.

So for example, we've got 2 events happening. We've got the sending of the notice, and we've got the date of the meeting. Section 36 says, you calculate your time period exclusive of those events. So, that's how we come up with what we call... and, Reena, you let me know if you use the same terminology, 7 clear days, which reminds us-

**Reena Van Aalst:** Yes, exactly right, Amanda.

**Amanda Farmer:** Yes, not to count the day of sending or the day of the meeting. Have you ever come across this confusion, Reena?

**Reena Van Aalst:** Yes, quite commonly actually, Amanda. And, I remember having a training session in my previous employment, where I actually had a case, where someone had actually gone to the tribunal, and submitted an application against the owners corporation, for that very strict reason that you just mentioned, about 7 clear days. And in the case of this particular owners corporation, it was deemed that they were one day short. And, this was actually by postage, so it wasn't even by email, so it was by postage, where it's even more onerous with postage.

So for managers, most managers should be aware that last year, I think it was in December, the Interpretations Act actually was amended, because the postage is now delayed, where you don't have the next day delivery as you did before with Australia Post, because most people are now using post as a medium of sending documents, mostly use email or other forms. So, that actually was increased last year. So now, it becomes, I think it was an extra 3 or 4 days, I can't-

**Amanda Farmer:** Yes, so it used to be 4 working days, and then your notice is deemed delivered in the post. It's now 7 working days, which is huge.

**Reena Van Aalst:** Yes. An extra three days, sorry Amanda. Yes.

**Amanda Farmer:** Yes.

**Reena Van Aalst:** And therefore, now when you calculate that, you also have to take into account the weekends. Because, there's no postage on weekends. So, I think it works out to be, now, I think 17 days between when you issue the agenda and the date of the meeting. So, I think there are cases, if someone has an issue with any motion that you've submitted, and that they go to the

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tribunal, that meeting in this particular case was overturned, because the proper length of notice, which is being, the 7 clear days as you've just identified, Amanda, was not issued.

**Reena Van Aalst:** Now, sometimes if there are things that come late on agendas, and when we've had that, we've had deadlines to meet, we just send it by express post, where we have the next day delivery. And that's very, very rare. But for agents, it's really important to make sure, especially if you've got special resolutions or some by-laws, or things that could have an effect in the future.

And I recall, even initially, when I first started in strata, there was this lawyer who didn't want to pay his levies, and I remember that he actually, because every single meeting that was sent, every AGM was not sent with the correct time, he managed to get every single AGM invalidated.

**Amanda Farmer:** Wow.

**Reena Van Aalst:** All the levies had to then be re-struck again, because, on that technicality. So, for those of you that want to do some research, there are many cases out there, where you know, one day short is not just a simple error.

**Amanda Farmer:** Yes, you don't want to open yourself up to that kind of a challenge. And, what I think is happening Reena, is that, with more and more buildings accepting service by email, and agendas being sent out by email, some managers might be getting a little bit complacent, and thinking, "Oh I've got time, I've got time." And then leaving it to the last minute, and trying to push that out, the week before. But, one day certainly does make a difference. And, I thought that was a good reminder to bring to the podcast.

**Reena Van Aalst:** And, one will thing, Amanda, what about when you get bounce back? Sometimes, when we send out emails, we get bounce backs. So then, we have to then print those off and send them. So, if you've got to the last minute, then you're really, again, pushing it.

**Amanda Farmer:** Yes. That's right. Certainly, your email is not deemed received if you get a bounce back, that's for sure.

**Reena Van Aalst:** Exactly.

**Amanda Farmer:** Okay. Let's jump into your win, Reena.

**Reena Van Aalst:** Well, this is another insurance one actually, which is the reverse of my initial challenge.

**Amanda Farmer:** Oh good, we've got to balance it out.

**Reena Van Aalst:** Yes. So what happened, we actually had, last year, you may recall for those people that live in Sydney, there was a huge storm on, I think it might've been the 19th, the Thursday before Christmas, there was hailstorms, damage to so many cars and property. And, in one of our schemes, they actually have, like a sail shade, and the insurer declined to have that repaired or fixed. They said, that's cloth, and the insurer blatantly... We said, "No, it's been damaged by the hail storm," and they use some sort of wording.

Anyway, our fantastic broker was able to negotiate on our behalf, and basically, I don't know, look at the wording again, and they must've been able to find something where, it was proven that it was covered under the policy. And, it was about \$10,000. We're not talking about a small amount of money. And the insurer said, "You know, you're right. This is going to be covered now." But, it took us like 2 months to have this argument. Although I suppose, I think from your experience, Amanda, is that many claims are going for months.

**Amanda Farmer:** Yes.

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**Reena Van Aalst:** Months and months. So, 2 months might've been not too bad to wait, for a favourable outcome.

**Amanda Farmer:** Yes. Well, congratulations. That's great.

**Reena Van Aalst:** Yes.

**Amanda Farmer:** And, good to hear that you had a good broker there, who was able to achieve that for you.

**Reena Van Aalst:** Yes, I was very lucky. And they're very tenacious, keep working, keep communicating. And also, understanding the policy wording.

**Amanda Farmer:** Yes.

**Reena Van Aalst:** And this is why people should have a broker, because that's really their expertise. Look at the wording, look at the event, and try and see what it can be done on behalf of the owners corporation.

**Amanda Farmer:** Well, that broker may have a new client, soon. Your other building.

**Reena Van Aalst:** [crosstalk 00:12:35] wants to email me, I can let you know.

**Amanda Farmer:** Yes, a few new clients. There you go. Okay. Well, the win I am bringing it to the table this week, is a case. And, I wanted to draw everybody's attention to our first collective sale decision in New South Wales. Now, this is a decision made by the Land and Environment Court, under our new legislation, which started back in 2016. Which allows 75% of owners to decide, that they would like to sell the entire building to a developer.

And, we lawyers have been waiting for some time, to see this first decision come out of our Land and Environment Court, and here it is. It came out in early August. I will put a link to the decision in the show notes for this episode. It involves Strata Plan No. 61299. And, that scheme is a reasonably large scheme, 159 lots in Sussex Street, Sydney. It's a mixed-use building. It has 119, I think, service departments, over about 20 levels, with a cafe, a gym and basement car parking.

And, they decided that they'd like to market the entire building for sale, to a developer, and they embarked upon that process a couple of years ago, and the Land and Environment Court has now ruled that they have done everything correctly, in accordance with the procedure set out in the Strata Schemes Development Act, and they can proceed to sell.

Now, they had to go to the Land and Environment Court, because they didn't have agreement from every single owner. That was going to be quite difficult to get. However, interestingly, in this case, whilst owners who objected to the sale could have turned up to the Land and Environment Court, and argued against the sale, nobody did. So, they didn't have any dissenters. The legislation calls those people dissenters.

**Amanda Farmer:** There were no dissenters in this case, which made it reasonably straightforward, from the perspective that there was no argument against the collective sale. But, it is a very detailed judgment, as it should be, going through the complex parts of our legislation, that set out how this is all to be done, and makes very clear that every box needs to be ticked. The i's dotted, the Ts crossed, otherwise these kinds of proposals will fail.

So, a successful result in that case for that building, they're now going to embark upon the actual sale. And then, we'll see that go through Land Registry Services, and see how that department copes with all of that. But, it was quite interesting, because they had a number of overseas owners. There was a lot of discussion in the case about how service should be affected, of the various court documents and other notices that need to go out.

**Reena Van Aalst:** Wow!

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**Amanda Farmer:** So, it's a good instructive case, for those of us who are in the earlier stages of these collective sales. And, I know from my own office, and talking to my colleagues, there's a few of those going around at the moment, soon to be before the court.

**Reena Van Aalst:** Interesting, Amanda. So, I think it's a good result for that scheme. But as you said, quite rightly, if there were any dissenters there, I wonder if that would have been the case, but it's interesting one to keep your eye out, in relation to.

**Amanda Farmer:** Yes. Definitely having dissenters involved, arguing against the sale, trying to pick it apart, if you like, or perhaps trying to say that it's not just an equitable, which is a consideration that the court needs to make, that could well have changed the outcome. And, in different cases, I imagine in the future, there will be dissenters, and we'll see some different arguments about those points. But, it's being hailed as a positive, a good case. We're happy that the first case to be fully considered under this new legislation has resulted in an approval of the collective sale, and we'll wait and see what comes out next.

**Reena Van Aalst:** Yes, keep our eyes open, Amanda.

**Amanda Farmer:** That's it! All your ears, keep your ears open, I'll keep you up to date.

**Reena Van Aalst:** Eyes and ears, eyes and ears.

**Amanda Farmer:** That's it. Okay. Well, I think that's it from me, this week. Anything else, Reena?

**Reena Van Aalst:** No. All good, Amanda, from my end. Thank you.

**Amanda Farmer:** Excellent. Good to chat with you. I will catch you next time.

**Reena Van Aalst:** See you, Amanda. See you then.

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