

Publication Date: 1 October 2019
YSP Podcast Transcript: Episode 181. Absentee committee member | restricting committee power | by-law

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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's it going?

Amanda Farmer: It is going very well. It is lovely to have you with me again this week. How was your week in strata?

Reena Van Aalst: Yes, busy as usual. As we all know, any of us working in strata are always busy.

Amanda Farmer: That is right. Somebody said to me recently, "We shouldn't say we're busy." When somebody asks her how she is. Instead of saying, "I'm busy," she says, "I am at ease." Isn't that nice?

Reena Van Aalst: Yes.

Amanda Farmer: I am at ease. I am in flow. I am on purpose. How about that? Let's do that.

Reena Van Aalst: Yes. I'm at ease going a hundred miles an hour. Yes. That's my default.

Amanda Farmer: On purpose. On mission. Heading in the right direction.

Reena Van Aalst: Exactly.

Amanda Farmer: That's us. Let me know what your challenge has been this week, Reena. Jump in.

Reena Van Aalst: Another interesting one, and I think sometimes, Amanda, I think, "Oh, what am I going to talk about on this podcast?" There's so many things that could happen. And I think, "What am I going to say?" And then something happens. I think, "Oh, I'm going to put that up on our spreadsheet." But a few weeks ago I had a strata committee member ask me this question. And I thought, "This is a good one for our discussion."

So we had an AGM and I think at the end of last year an owner was elected to the strata committee. I think everyone was a bit surprised that she wanted to go on for various reasons, which I won't really go into. Anyway, since that time, she has never been to one meeting, never responded to one email, never sent a vote and never heard for any of our committee meetings we had in writing. We had one just recently. And the other committee members asked me, "Well, can that person be excluded from communication if they're not even responding, or coming to meetings?" And basically, is this is like a person that's filled a position, but it's like they're missing in action.

Now, they've been to other meetings in other strata schemes that we manage, so we know that they're around or not as if they're ill or anything like that, which could be the case. We shouldn't always... Again, the negative bias that I've mentioned in my last newsletter. We're all sort of programmed to have negative bias as part of our inherent make up prehistorically when we were back in the day when we had to worry about surviving. And therefore, they said, "Well, can a by-law be passed about someone's conduct, or lack thereof, in terms of whether or not if someone doesn't attend meetings, can they be excluded? And I didn't think that was possible, but I just thought, Amanda, that we might just raise it with you on today's podcast.

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Amanda Farmer: Yes, interesting situation. Look, I don't think a by-law is the answer. That sounds a bit heavy-handed to me, and as you said, we need to think about different circumstances. And there might be reasons why in different circumstances people can't attend meetings, perhaps for a protracted length of time. I'd certainly, in this situation, be approaching this person and noting that she hasn't been to any meetings, hasn't responded to any emails. Is the committee something that she would like to continue to be involved in, continue to serve on? Because if not, then she's welcome to send through her resignation, and that will be accepted.

And that might be a relief for her. Some people are not that assertive and they think that they will be letting down their fellow committee members. They don't realise that they're actually letting them down by sticking around and not doing their share of the work.

So to be invited to resign, or to have the members say, "Look, actually we think we've got enough support with our current members. A resignation is something that we would accept if you'd like to table that. We can obviously see that you're busy, you've got lots of things going on and we don't want to continue to burden you." So I'd certainly be issuing that invitation. Perhaps that starts with a conversation.

But in terms of a by-law, as I said, I think that's heavy-handed, but it is an idea if a committee has a code of conduct, or some kind of procedural rules, it's certainly a good idea to put in there the expectation to attend meetings and to consider and be involved in correspondence. And perhaps to indicate that if that expectation is not met, a motion may be put forward at a general meeting for a special resolution vacating that member's position. Because that's the way you force somebody out.

Reena Van Aalst: Yes, exactly. I think in this case there's a few other issues that are in the background. But I also believe that if you can't come to a meeting, there are times that we haven't been able to achieve a quorum. So, like had we known that she wasn't going to come, then we could have changed the meeting date.

Amanda Farmer: Yes. Exactly.

Reena Van Aalst: So it's not just about participating. It's also in, you don't let people know whether you're coming or not coming that people think then quorums aren't achieved because people are away, which we already knew about. We had received apologies. But sometimes when you assume someone is coming, because they haven't said they're not coming then, yes. So it puts other people out more than just their participation.

So I think that's a great idea, Amanda, just putting it to her and saying, "You haven't come to any meetings, obviously too busy or whatever. You might have other reasons. I mean might be best if you would like to submit your resignation." Then at least we can, if we would decide to fill a vacancy, because you don't have to anymore, as we as we know the new legislation, at least if it is filled, than it is filled with someone who would like to participate and contribute. And there are many people that do this. We've already had people saying, how do I get on to the strata committees?

Amanda Farmer: There you go.

Reena Van Aalst: So, a way for me to use that as a segue to try and perhaps speak to her in that context.

Amanda Farmer: Yes. And perhaps letting her know that "Look, so-and-so from Lot 4 has approached us, would really like to be on the committee. We don't have a vacancy. We've noticed that you seem to be occupied with other things. How would you feel about so-and-so taking your position?" That certainly happened in my building. I think it might have been when I moved in, somebody promptly put their hand up and said, "Amanda, I'm vacating my position. Can you please step in?" And I said, "Who me? What? Oh, of course."

Reena Van Aalst: Then you've regretted it ever since. Right?

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Amanda Farmer: No, I have not. I'm happy to-

Reena Van Aalst: It's a lot of work. I think people don't realise until... They come from living in a house to living in a strata scheme is... There are things happening in your building. It's a lot of work, Amanda, as you as you would know in your own building, and I know in my building. It's sometimes, especially in some schemes, where the responsibility of a lot of the decision making falls on only a handful of people, it can be quite cumbersome for those people to have to keep putting in a lot of time, while those people don't, not necessarily put in an equal share. When to me it's not about equality in terms of contribution. Everyone's different. The skills I bring to the table are all different. It's all about just trying to help each other in the way that you can help in whatever capacity. And I think sometimes in cases that doesn't happen.

Amanda Farmer: Yes. It is a big burden to take on and acknowledging that is a good way, I think, to open the conversation with this particular person. As my colleague and friend Michelle says to me, "Amanda, you sit on your strata committee. You knock off work to go and lay bricks." Yes. That's pretty much how it goes.

Reena Van Aalst: Yes. All the bricks are in your mind, Amanda. Over and Over.

Amanda Farmer: It's all happening. But anybody who knows me well knows that I'm one of those crazy people that loves this stuff.

Reena Van Aalst: Yes, exactly right.

Amanda Farmer: You're one, too, Reena.

Reena Van Aalst: I know.

Amanda Farmer: Don't hide it. Okay. I'm going to jump into my challenge for this week. I am raising an issue that has actually come up, strangely, a few times in the last month by lot owners raising this question directly with me. It's a question about the motion on the AGM agenda, which is often titled "Restriction on Strata Committee", but is a motion that reads something to the effect, "To decide if any matter or type of matter is to be determined by the owners corporation in general meeting."

And I've had a few owners recently say, Amanda, what does this mean? If we decide that no matter or type of matter is to be determined by the owners corporation in general meeting, are we giving our strata committees absolute power to make decisions about everything? What does this motion mean? Why is it on our agenda?

Now, it's on your agenda because it's what we call a statutory motion. Our legislation says that it must be on the agenda for every annual general meeting. And the way I explain it to owners is this, your strata committee actually has a fair bit of power, particularly in a scheme that has 100 lots or less. Any decision of the strata committee is actually a decision of the owners corporation, and our legislation does say that.

The only things that a strata committee cannot make a decision about are the things that our legislation says must be decided by the owners corporation in general meeting. For example, the making or changing of by-laws, the raising of levies, the appointment of a strata manager, the decision to improve the common property, the appointment of a building manager. If the legislation doesn't specify that the decision must be made by the owners corporation in a general meeting, then the strata committee can make the decision.

So there's actually not too many things that a strata committee can't decide. And the point of this statutory motion is to give the opportunity to the owners in general meeting to further restrict their strata committees. Now Reena, you would have this motion on the agenda for every AGM that you have. What's your experience of the way that owners respond to this? Do they restrict their committees? If so, what are some of those restrictions?

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Reena Van Aalst: My experience has been, Amanda, that owners that really don't trust their committee are the ones that restrict them. Or if there's been a history, perhaps, of spending on items that perhaps even though they were budgeted, may not have been undertaken in the way that they saw fit, or would have liked the money to have been spent. So common examples of restrictions, which are very rare in my experience because in a sense, you've got to be able to give the committee some latitude. But on the other hand you've got to make sure that you do have the right committee members elected at the AGM.

The other issue that we find is that people sometimes don't understand that when you take away the power from the strata committee, it means you have to come back to a general meeting every time to make that decision. And this obviously incurs additional costs. Whether they be managing agents time, you know, disbursements, et cetera. So in a sense when these decisions are being made, I think you need to understand the consequences of such a decision before the decision is made and perhaps if there is a restriction, it is carefully considered.

Common examples that I've had occur, that have resulted due to past incidences that members or owners haven't been happy with. For example, I had one where they stopped the committee from dealing with anything to do with the garden or pruning of trees, because someone had hacked a tree, and it had been pruned too much and you know, their privacy was lost, et cetera. And they were able to gain sufficient momentum at the meeting and have that restriction placed. I've had people try and have restrictions in terms of monetary maximums over and above the budget.

These have some times passed, but on the whole they have failed when the amendment has been put forward. Because I think what happens, if things happen and it's an emergency, and then well what is an emergency? And you know, sometimes people's reception or interpretation can be quite different. Now in one particular scheme that we manage, they had to get a new switchboard now that was like \$30,000 and it was done very economically because you know, the secretary knew the electrician, he knew it, you've got a manufacturer. So there was no mock up on the actual board itself and he, it was very efficiently done. And had that particular restriction which had been proposed by an owner who has a problem with some of the committee members, then we would have to have called a general meeting. You know, because it's quite a substantial amount of money with spending. It's unbudgeted because of course it was an emergency.

And no one knew it was going to collapse. And of course the repercussions of not having power in a building, especially now with people working from home, et cetera, and some people that have medical equipment that rely on power could have been catastrophic. So I think, Amanda, my experience has been that these are very limited. They're few and far between as far as my experience has been. I don't know about others. But it's usually stems from a lack of trust in the strata committee. Although those people don't want to go on the committee, but they don't want to restrict the other people though who are already on the committee or who are actually doing a lot of the work, so...

Amanda Farmer: Yes, good point. In my experience, they're rare, as well. And I agree with you. When I attend meetings where this motion is put forward for consideration and owners kind of say, "Oh, should we do this? Should we not?" I always say, well look, these are your elected representatives. These are the people who you've decided can work with the strata manager to make the day-to-day decisions about the building. You've put your faith in these people that they can do that job and act in the best interests of the owners corporation, which is their legal duty. I don't see a reason to restrict them any further. And I agree that when these restrictions are put in place, it's because there's been some specific concern. I've definitely seen monetary restrictions. So for example, the strata committee cannot spend over \$10,000 on any one item without coming back to general meeting.

It can be a shock sometimes to some owners to realise that the strata committee does have the power to spend money on unbudgeted items, particularly in those smaller schemes. And when I say smaller, I do mean 100 lots or less, which is not necessarily that small. But in our one 101s, 101 lots or more, there are some more restrictions when it comes to overspending on the budget. But certainly, I can see the intent there. That in an emergency situation, the strata committee needs to be able to make a decision to engage a contractor, to spend money, to do work. And to have to go back to a general meeting can jeopardise the position of the building.

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Amanda Farmer: So it certainly doesn't mean if you don't pass a motion to restrict your strata committee that the strata committee can make by-laws, and engage strata managers, and make decisions that the legislation otherwise says must be made in general meeting. That is the bottom line. If the legislation says this is a decision that can only be made by the general meeting, then that remains the case, even if you haven't expressly restricted your strata committee.

Reena Van Aalst: That's great, Amanda. And I think also for schemes less than a hundred lots, I mean normally a budget has been passed. And again, I think, this is where I think managing agents perhaps don't really undertake their functions fully. Because when you have a budget that everything's under general, where there's no distinction of how general's being made up, then that obviously can give no comfort to owners who may have concerns.

But that budget is broken up into other ventilation, fire safety equipment replacement. It's specific. Then there's a bit of a guideline. So we know that we had our annual testing done of our fire safety equipment, and we have all these replacements that have to be undertaken, need fire doors. Well then we've got to budget for that. That should be separately budgeted so that people can notify... And there should be perhaps an explanation provided with budgets where people will understand, well you know they've budgeted this much because we've got quotes for this work. And if you have a committee that regularly meets, then all of the stuff as being documented throughout the year. So when the budget is being presented, all the stuff that has been included has already been discussed at prior committee meetings, and has been put on hold until the budget is approved so that we can then proceed with those works if they're not urgent.

Amanda Farmer: Yes, it's all about keeping those lines of communication open-

Reena Van Aalst: Exactly.

Amanda Farmer: and having that regular routine of meetings with agendas and minutes. That solves a lot of problems.

Now I'm sure this is a topic for another podcast, Reena, but it's interesting that you mentioned there the budget that contains a general line item or no line items at all. I've seen a little bit of that recently, particularly for capital works funds.

Reena Van Aalst: Oh, I have too, Amanda. Buildings I've inherited-

Amanda Farmer: What is that about?

Reena Van Aalst: have nothing budgeted. I'm thinking, "How can you have nothing budgeted?" Like, surely something that will have to be spent in this financial year. I just can't believe it.

Amanda Farmer: Yes, or there's a budget, but it's a lump sum for the capital works fund for capital work. There's no itemisation.

Reena Van Aalst: Exactly. Yes, but I've got, I mean I had one where a particular treasurer said, "Oh, no. I wanted to have zero." And I said, "No. Here's a capital fund forecast. Now you may not want to spend all that money, but you've got to make some provision to accumulate money over time towards these expenses, even if you're not undertaking this financial year. If you're going to do something in the next financial year, you might want to raise half now and half next year, or whatever. So..."

Amanda Farmer: True.

Reena Van Aalst: Yes.

Amanda Farmer: But I imagine there's always some kind of repair and maintenance that's going on, and I'm surprised when buildings don't have that proposed or set out for owners to follow. And of course then they're going to be surprised when their strata committee makes these decisions to spend money that seems to come out of the blue.

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Reena Van Aalst: Exactly.

Amanda Farmer: Okay. I'm going to put that one on our spreadsheet. Let's talk about budgets. Yes, I'm excited. Okay. Shift gears. Tell me about your win this week, Reena.

Reena Van Aalst: Well, I think for all those who attended our Women in Strata event at the Ivy, with Jamila Rizvi, that was held on the 16th of August, which was a phenomenal event. It was sponsored by Chambers Russell Lawyers and I think we had the biggest turnout of any event of strata managers for any industry event which I've been to, now, I would say in the last 15 years.

Reena Van Aalst: So I want to thank Chambers Russell and all the other sponsors that helped make that afternoon a great event. We all received her book as well, which I think is the one of the rare things that you do receive when you go to a networking event. It was educational. There were quite a lot of men there as well, which I think sometimes people think, "Oh, Women in Strata, it's just for women." It's not, it's for men as well. And I think everyone that I've spoken to received a good takeaway from that event, regardless of where they are in strata in personally, professionally. It was a very inspiring event to have been involved in. So thank you all for those that actually came.

Amanda Farmer: Yes, I know lots of listeners to the podcast were there. Women in Strata, if you haven't come across it yet, it's a group that I actually started back in 2015, as a networking and support group for women strata managers in particular, and women working in the strata sector. And it has gone from strength to strength over the last few years. And we have a very devoted steering committee. Reena is a member of that committee, and we've been having some fabulous events over the last few years. Our next one is coming up on the 21st of November. That's our end of year celebration. It will be at the winery in Surry Hills. Very exciting evening, and by the time this goes to air we'll probably have our registrations open for that event. So I will put the link to join us on that evening in the show notes for this episode. Head over to yourstrataproperty.com.au. Find this episode at the top of the list of podcasts there, and we'd love to see you at our next Women in Strata event.

Reena Van Aalst: Definitely Amanda, I think everyone's looking forward to it.

Amanda Farmer: Yes, indeed. Always fun. Okay, well I'm going to finish up with my win for this week. And I am always happy to share when I have a legal matter that has been settled without the need to go to, or to continue litigation. Now in this case, I was acting for an owner who wanted to do some renovation work at her lot. And it was a reasonably small scheme, only a few lots. I'm not going to give you the precise details to protect identities. But there had been some opposition to her renovation and she wasn't able to get her by-law passed at a meeting.

Now in New South Wales, our legislation provides that if a common property rights by-law has been unreasonably refused by the owners corporation, an owner has the right to go to the tribunal and have the tribunal make an order, which then effectively makes the by-law, and the by-law can be registered on the title without the need for a meeting.

When her by-law was refused, this owner came to me and asked me if I could assist her with that tribunal litigation and we commenced that. We attempted mediation with the owners. We got a couple of issues resolved, but not all of them. So we prepared our case for the tribunal, put our evidence and our submissions together, and it was shortly after we served that material on the owners corporation that they essentially came back and accepted one of our earlier proposals, which involved convening a meeting, and considering the by-law again with a couple of conditions changed to meet some concerns of the owners corporation. And the owners gave a commitment that they would support the by-law at that meeting. And being a smaller scheme, then that was sufficient to give my client comfort that her by-law would go through at a later meeting. So that was certainly a win for my client.

And what I wanted to highlight out of that process is that sometimes it does take that little bit of extra work, putting a case together for litigation, making your legal arguments, your legal submissions, referring to other cases where there have been similar circumstances and the tribunal has decided in favour of the lot owner, and essentially spelling it out to the owners corporation, "This is the kind of case where the tribunal is likely to make the by-law, and if we can come together and cooperatively make a by-law that makes both of us happy, then that's the better way to do things."

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And it was a sensible, in my view, owners corporation in this case who understood that position, read the material carefully and decided that it did not want to face the uncertainty of litigation. So a good win there.

Reena Van Aalst: So Amanda, without giving away too much, I know that you can't reveal a lot about the particular circumstances, but what was the main crux of their disapproval in the first instance?

Amanda Farmer: They felt that the renovation was going to change the way that people used the entrance and exit for the building.

Reena Van Aalst: Okay.

Amanda Farmer: And there was a certain path in and out of the building. And if my client did her renovation, there was concern that this would change the way that that path was used, and would therefore impact on other owners. So we answered that by saying A, that that path would not change and it wasn't being used in the way that the owners corporation thought it was at that time. And B, if there was a concern that it was going to change, well that could be dealt with by additional clauses in the by-law, which dictated, if you like, how that path should be used once the renovation was done.

Reena Van Aalst: And were there other conditions that were then added?

Amanda Farmer: Yes. Yes, yes.

Reena Van Aalst: Yes.

Amanda Farmer: So that's the benefit in communicating and trying to solve these issues. If you can understand the concerns and if they can be articulated to you. There's almost nothing that can't be solved by agreement terms or by-law conditions. But if you don't talk to each other, you don't ask the question, you don't find out what the concern is, your left guessing and you end up in sometimes unnecessary litigation because you thought they were concerned about something that they're not concerned about. And if you had known it was this, then we could have dealt with that. Open communication is always the best option.

Reena Van Aalst: So another question I have for you, Amanda, is in your client's particular circumstances, did that client submit the by-law initially to the strata committee just for their initial thoughts and considerations before it was formally... Because, what I've found that's worked in the past where someone wants to do that, we always decide it's just good for the strata committee just to have a look at it. Because if there any concerns about any of the clauses or any of the conditions that you just mentioned, at least then that can be communicated so that the owners may even consider it, go back to their lawyer, have those clauses added, and then it comes back. And I've found that when that's happened invariably, the by-law is passed. If there is agreement on those matters.

But if there isn't, that's a different situation. But I think perhaps that might be a better way to go, is to perhaps submitted in the first instance, see what people think about it. Because if the committee have those concerns, then you can be guaranteed that other owners at the general meeting will also have similar ones. So if you can iron those out initially, and come to some common ground on those matters, like you said, Amanda, of communication, have the lines open, then you might be able to find that you may not interest sort of go to a general meeting, pay for it, haven't knocked back, then go back and settle over again, and perhaps go in other avenues when you know you can perhaps bypass that from in the first instance.

Amanda Farmer: Yes, for sure. And we have definitely spoken about that on the podcast before. I agree with you, Reena. That is best practice to submit your by-law as a draft first and get that feedback. I don't believe that happened in this case. I think if it was an AGM that was coming up. It was all a little bit last-minute in that the by-law and other motions had to be in by a certain time.

But definitely for owners who are wanting to do significant renovation work, putting those terms forward as a draft first is a good idea.

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You've just reminded me something like that has happened very recently in my own building where an owner has wanted to do some work, and knowing that the by-law proposed really does need to have the support of the committee, otherwise it's not going to be supported by the other owners, it was sent to us first for our thoughts, which was a really good opportunity to iron out some questions and now we can support that work at the next general meeting.

Reena Van Aalst: Yes, that's exactly the case and I think that's a really good outcome.

Amanda Farmer: All right, so another jam-packed episode. Lovely to catch up with you. I shall see you next time.

Reena Van Aalst: See you next time. Bye, Amanda.

Amanda Farmer: 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?