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YSP Podcast Transcript: Episode 182. The 5 By-Laws for Strata Managers to Recommend

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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: Hi everyone, a solo episode from me this week. First start, I am going to apologise for the audio quality, perhaps a little bit different to what you're used to from the podcast. I am not in my usual location using my usual mic. I'm actually traveling at the moment and right now I am lucky enough to be in Paris. So coming to you from Paris, France, very exciting and I've done my best to give you the best audio quality I can in these extenuating circumstances.

Letting you in on a little secret here. I am actually standing in the walk in wardrobe of the apartment where we are staying being the quietest place than I could find in the hope that this podcast can come to you as smoothly as possible this week. So just picture me here looking at coat hangers, jackets, dresses, shoes as we chat about one of my favorite topics, by-laws.

I talk about by-laws a fair bit. You may have heard me talk about the power that by-laws have if used correctly to ensure peaceful community living. I've talked about that on the podcast. I've had a webinar on that topic and I've done a few live events talking about how we can use by-laws to combat bad behavior in our apartment buildings, and today I want to give you a little bit more practical guidance about by-laws. I'm going to tell you what I think the top five by-laws are. The five by-laws that I absolutely recommend you have in place and if you are a strata manager in particular, these are the by-laws that I think you should be recommending to the buildings that you're working with, the committees that you're working with. More and more, I think buildings are turning to their strata managers for advice on how they can use by-laws to do things more effectively in their buildings.

And I think you as strata managers need to be ready to give that guidance and I think that's what's going to set you apart from the competition. You want to be the kind of strata manager who can answer that question. Is this a good by-law? Is this not a good by-law? If it isn't, why not and where are the gaps in your client's suite of by-laws that you think need to be filled?

Now, I know that after this episode you're going to want to dig a little bit deeper into some of the issues that I'm going to raise and I can tell you now, I am not going to leave you hanging. At the end of this episode, I will let you know what I have planned for you. It is a date for the diary an opportunity that we will all have to get together and learn a little bit more about these by-law essentials, so listen out for that, but right now I'm diving into the top five by-laws that I recommend buildings have in place.

First of all, renovation works. This will not be a surprise to many of you and many of you will have this kind of by-law in place. It's the by-law that delegates authority to the strata committee to approve certain types of renovation work on behalf of the owners corporation. In particular minor work, the type of work that's covered by Section 110 of the Strata Schemes Management Act. We're talking about kitchen renovations, hard flooring, changing recessed light fittings, reconfiguring of internal walls.

This is all minor work under Section 110 of the Act, and we can delegate to our strata committees the authority to approve that kind of work so that we don't have to go to a general meeting and get an ordinary resolution to approve that work. So lots of buildings have done that. They've delegated that power to their strata committees using a by-law. But I think that you should also take the opportunity with this by-law to address other types of work.

What kind of work is cosmetic work and therefore doesn't require the approval of the owners corporation. What type of work is major work that you may want owners to propose their own bespoke by-law. Work involving waterproofing, structural changes. Work that affects the external appearance of the building. What process should owners be following when they want to carry out that kind of work. That can all be in your renovation works by-law, clearly set out, easy to read, easy to access for owners, and it provides that step-by-step framework that owner is wanting to do work, at their lot can then follow, making life easier for them, easier for the strata community, and easier for the strata manager. So if you haven't got a comprehensive renovation work by-law in place, have a think about that one.



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Amanda Farmer: Secondly, keeping of animals. I think all buildings should be reviewing the rules that they have in place when it comes to the keeping of animals. Do you still have a blanket ban on pets? We're seeing more and more cases come out of our tribunal saying that such a ban is harsh, unconscionable, or oppressive, and if you have a by-law banning animals altogether, that by-law could be invalid for that reason. My suggestion is that you replace your blanket pet ban with a detailed by-law that sets out the process that residents should take if they want to keep an animal.

I think we should be regulating the outcomes of the keeping of animals, not the fact of keeping the animal. That means your by-law can address things such as noise, mess, disturbance, what areas of the common property and the animal is or isn't allowed to be on and of course a process for resolution to apply to the strata committee for approval to keep their animal and the strata committee can consider those applications then on a case by case basis. And of course these type of by-laws should also make residents responsible for the consequences of their animal being on the property, including where there might be additional costs because of cleanups that might need to be done.

For example, all the building manager having to get involved in complaints about noise. What happens when there is more than one noise complaint within a certain period of time, within a couple of months. Is there a warning that gets issued to the resident? Are there costs involved in having to issue those notices? How is that shifted on to both the resident and the owner? Does your by-law set out that ultimately the owner of the property is responsible for these additional expenses? Because that's the way you would've heard me say it before. You're going to ensure a higher level of compliance. If we're ultimately making owners responsible and we're making clear that expenses incurred because of failures to comply will be recovered from owners and I'm going to talk a little bit more shortly about a specific by-law about the recovery of those kinds of expenses. So that's keeping them animals. At with the pet mans they're out of fashion and in with the application process.

The third by-law that I think you should all have in place and that I think strata managers should be recommending for their buildings is an induction procedure or a move in move out by-law. Now, this is a by-law that formalises that process of moving into and out of the strata building and make sure that there is always a fixed point of contact between the new resident and maybe it's a particular committee member or it's the building manager or it's the strata manager because that's an opportunity to educate the incoming resident on the expectations of their new community and to let them know about such things as other by-laws that we have. These are the rules that we comply with. How do you deal with rubbish?

You are going to moving in. You've got your new furniture, you're going to have empty boxes. Where should they go? Where's the bin room? Where's the recycling? You're moving out. You're going to have furniture that you might not want anymore. What's the phone number to ring for the council pickup so that we're not dumping on the common property or illegally on the street?

The by-law is going to set out who should be notified, when they should be notified of the moving in or moving out, whether a bond needs to be paid, how the lift and other common areas might need to be protected and perhaps an induction process for the use of facilities such as the gym, the pool, any entertaining areas. We're really using this as a way to introduce our new resident to the community as a whole. Make sure we know who they are, they know who the committee contacts are, the best person to speak to, face to face on site about issues that they have and it's just going to make sure that you starting off on the right foot.

I know buildings that have these processes in place operate a lot more smoothly than those that don't and they have this really important opportunity to catch new residents, if you like. At that point of entry and exit.

The fourth by-law, I recommend recovery of costs or recovery of expenses by-law. This is what I was briefly referring to earlier. Without the authority of a by-law. It's very difficult for owners corporations to legally recover from owners the types of expenses that are not otherwise characterised as levies. How legislation is quite clear in New South Wales that owners are living in accordance with their unit entitlement. It's the levies that go on the levie register unless there is a by-law empowering the owners corporation to charge and recover other expenses from owners, such charges could be successfully challenged by owners and will be hard to recover. So we lawyers always recommend a carefully drafted by-law that provides an avenue for that recovery of additional strata management expenses, building management costs, wherever there are expenses incurred because of a residence.

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Amanda Farmer: Failure to comply with by-laws, failure to follow procedures, a false fire alarm perhaps. I'm often asked to draft by-laws for the recovery of what I understand can be quite large. Call-out fees, if the fire alarm is set off, if we know which resident has done that and we have a by-law in place that allows us to charge to that owner's levie register, lot account, the costs of that call-out, then we're going to be able to rely on that by-law to recover those costs.

It's always a good idea as well I say to have a by-law that makes clear that the expenses incurred during the process of levy recovery. When you have unpaid levies and you're sending letters, strata managers letters, lawyers letters that the costs of that process can be charged to the lot owner concerned as well. Because otherwise it can be quite difficult to recover those costs unless you have started and finished legal proceedings. So court or tribunal proceedings. So a by-law that allows you to recover those costs is a really good idea.

And finally, number five, this is becoming more and more popular. A communications by-law, what do I mean? Well, strata managers out there, I don't have to tell you, you are dealing with more and faster written communication than ever before and so many committee members are in the same position. I know our inboxes overflow while we are sleeping. What a communications by-law does is confirms what the established protocols are for communicating with a strata manager and the committee. He can say such things as all communication must be courteous, respectful, succinct, not abusive, not insulting. We shouldn't have to say that, but sadly in some cases we do and communications that are sent in breach of the by-law may entitle the recipient to disregard the communication. Doesn't that sound nice?

I've drafted a couple of these for buildings recently. They've been very happy with the result. It's a very handy document to be able to refer to as a strata manager when you are dealing perhaps with a particularly unreasonable, repetitive, misguided, let's say resident or owner who may be emailing you constantly. It's a relief to be able to say this communication is in breach of our communications by-law and pursuant to clause X of that by-law, neither I nor the strata committee will be responding.

So that's a by-law I get particularly excited about and would love to see more and more buildings enjoy the benefits of that one. So, that was a whirlwind tour of the five by-laws that I believe all buildings should have in place and in particular that I believe good strata managers should be recommending to the buildings that they work with. A comprehensive renovation works by-law, a by-law that properly deals with the keeping of animals, an induction procedure or a move in move out by-law, a by-law for the recovery of expenses and a communications by-law.

Now, I told you at the top of this episode that I had a little something special for you, a time when we can get together and dig deeper on this topic. I've told you what I think good by-laws are. I also have an idea of what I think bad by-laws are, and there's a reason I'm able to give you that guidance. Sure. It's because I have a law degree and I've been doing this strata stuff for a long time, but I have a framework that I've developed from reading tribunal cases, from working with buildings, from hearing firsthand what works for them, what doesn't work for them. When I get this gut feel for a good by-law or a bad by-law, I'm able to back it up with my experience, with reference to cases, and I want you to be able to do that too.

I want you to know what makes a good by-law good and how do we avoid the pitfalls of bad by-laws. Your owners, your committee members at buildings you're working with are becoming increasingly aware of the unique power that by-laws have to regulate their communities and yes, as you've heard from me, by-laws can be very effective instruments, but sometimes they go a little too far. What is too far? How do you avoid a situation where you have an owner successfully challenging the validity of a by-law? Well, I'm going to help you out.

As I like to do. I'll be holding a webinar on Tuesday, the 22nd of October. It's called the essential by-laws webinar and on that webinar we're going to have a look behind these recommendations that I've made for good by-laws. Why do I think they're good? What is the underlying framework that you can apply to test whether or not a by-law is good for a building and, which by-laws should we be avoiding?



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Amanda Farmer: What by-laws just do not work and we need to get off the books of our buildings? If you're a strata manager or a committee member who find yourself saying to your clients or your fellow committee members, I just don't think what you're suggesting here is a good idea that you can't really explain why you have that gut feeling.

If you want to know what the words harsh, unconscionable or oppressive mean and how our New South Wales tribunal has been interpreting very recently, this new aspect of our legislation and if you want to know whether your by-laws will be valid, enforceable and effective, then you want to be on this webinar.

I'm going to be sharing my tools, my processes with you in an easy to understand way and plenty of time for Q&A as well. The webinar is on Tuesday the 22nd of October. We're going to kick off at 12 noon and we'll run for one hour 12 noon to 1:00 PM you do need to register so that you will get your unique access link for the day.

Register over at yourstrataproperty.com.au/webinar. If you haven't attended a webinar before, this will be a great first experience for you. Webinars are indeed online. You don't have to go anywhere just to your computer. You can even tune in on your phone when you register. You'll receive an email from me with the link that you will click on the day to join us on the webinar, so I'm really looking forward to it. I've put the webinar together based on a workshop that I have delivered for strata managers who have found it really helpful to have this ready framework of how to assess proposed by-laws and how to avoid ending up in a situation where you're in the tribunal with your client having to defend a by-law that really never should have been.

So get registered over at yourstrataproperty.com.au/webinar. I am so looking forward to seeing you online on Tuesday the 22nd of October at mid day. That is Eastern daylight savings time. We always have lots of fun on our webinars, lots of rapid fire questions for me to answer, and this is a great topic to get stuck into, so I'm going to get prepping for that one. I'm going to get myself out of this wardrobe and onto the streets of Paris, and I will catch you all next time.

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?

