

**Publication Date: 29 October 2019**  
**YSP Podcast Transcript: Episode 185. Isolation valves | leases vs by-laws | access to strata records**

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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](http://www.yourstrataproperty.com.au).

**Amanda Farmer:** Hello my loyal podcast listeners, Amanda Farmer coming to you solo this week and it is a big week. The doors to the membership are opening to the waitlist only this week. I am excited. Those of you who are on the waitlist are very excited about that. I know I'm looking forward to welcoming you all. Now I don't open the membership doors very often, sometimes maybe once, maybe twice a year at the most so when those doors open it is always a good idea to jump in when you can. That is what's happening this week for the waitlist only. If you are not on the waitlist, never fear. I am going to tell you today how you can get on there at the very last minute so you can snap up this opportunity to join us inside the membership. It's always a good idea to jump in when you can, when I open those doors, especially at the current membership price as that does increase over time, but we lock that in for you at whatever price you started on. So good idea on those rare occasions I opened up those doors to make sure you know about it and jump in. The only way you're going to know about it this time is if you are on the wait list. So more about that later.

First, in this episode I am going to give you a little taste of what goes on inside the membership and particularly inside the Q&A forum. That is the place where members ask me questions, I answer them. I do that in writing so you're not only getting your answer from a qualified experienced source, but over time we are building a giant knowledge library which is completely searchable and I have had members tell me in recent times that one of the best things about the forum is that they can type in a search term and have the answer to their question within seconds, which is really cool.

And today I have chosen three very recent questions asked by members inside the forum and I'm going to share with you the answers that I gave those members. It's a little bit of a mixed bag just to keep things interesting. The three questions that I'm going to get stuck into today, number one, who is responsible for replacing water isolation valves within lots? Is it the owners corporation or the lot owner? Now these are valves that we might call stop valves or stopcocks. If you're a manager, you would be well familiar with that term. I'm going to give you my view that I shared inside the members forum as to who is responsible for replacing those valves. Second question, if a lot owner wants to use part of the common property, should we use a lease or a by-law? What are the pros and cons of each method? Really great question from a switched on member. Third question to discuss today, what do I do when my strata manager refuses to give me access to the books and records of the owners corporation? This one comes up all the time. If you've been listening to the podcast for a while, you will know it is one of my pet peeves, but it is a question I love to answer.

So that's what we're doing today. Not something I've done before. Sharing some inside info from behind the membership doors, but should be a bit of fun and I will let you know at the end of the episode how you can this week join us inside the membership.

Okay, so first question, who is responsible for replacing the water isolation valves within lots? Now I am no plumber, but this is my lay person explanation for what in the world these things are. I think an isolation valve or a stop valve or a stopcock is what turns the water supply to your lot on and off and it's accessed from within the lot. It means that if you're doing some renovation work, you need to turn the water off for the kitchen sink, for the bathroom manatee. You can do that within the lot and you don't have to have your plumber turning the water off for the entire building. Plumbers out there, send me an email, let me know how I've got this wrong. Please go ahead. Now most managers out there will know in all the buildings, these valves can often seize up. They can be hard to turn. Nobody wants that. You don't want to be in a situation where you can't turn the water off or back on for that matter and it's often necessary to replace these valves over time.

Now, a very good question from this member, who is responsible for this replacement? Is it the owners corporation? Is it the lot owner? Are these valves common property or are they lot property?

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**Amanda Farmer:** And this member had received some guidance from a strata manager and he had also done some Googling which led to the conclusion that these were common property and the owners corporation needed to pay for their replacement. Now this question actually came at a very good time for me because I had been covering precisely the same issue in a piece of litigation that I was running for a building and I had talked through the very same question with a barrister who is helping us in that litigation and we had actually come to the opposite conclusion. We'd come to the conclusion that these isolation valves were actually lot property and I was able to explain to the member in the forum why we thought that was the case.

The owners corporation has, as we know, a responsibility to maintain the common property under section 106 of the Strata Schemes Management Act and if you have a look at the definition of common property in the Act and you compare that to the definition of lot property, you'll see that common property includes common infrastructure and this is actually in the Strata Schemes Development Act, the definitions in that Act. And common infrastructure is defined as only that infrastructure that is not for the exclusive benefit of one lot. So a pipe, a wire, a cable, a duct that is for the exclusive benefit of one lot is not common infrastructure and therefore it's not common property.

If it's not common property, then it is not the owners corporations duty to maintain. Now these stop valves can only be for the exclusive benefit of one lot. Their purpose is to stop the water supply to one lot. Every lot has one. They are therefore the responsibility of the lot owner to repair, maintain and replace. Now I said to this member in the forum I understand completely why some buildings, and I can tell you my building that I live in is included in this, actually embark on the task of replacing all of these valves all at the one time and pay for it because it makes sense that if you're going to do one or a few because they need to be done, there are going to be others in the building almost guaranteed that also need replacing. And it's going to be cheaper for everyone all around if the owners corporation engages a plumber, gets a fixed lump sum quote to do the entire building, all of the valves. And there might be two or three valves within each lot if we're looking at laundries, bathrooms and kitchens.

So I definitely see buildings do this and pay for this via the owners corporation by the fund of course, which each lot owner contributes to. And it also ensures that the work gets done and we don't end up with a situation where a valve has seized up, can't be turned and there's a flood which impacts others. But strictly looking at the definitions in the Strata Schemes Development Act, in my view, stop valves, isolation valves, are lot property and other responsibility of the lot owner. So that's what I shared in the forum. There was a fair bit of discussion after that back and forth between members, but I was able to provide that view based on guidance that I had received from another experienced professional that I'm working with, a barrister. And we do have the ability in the forum to link through to the relevant legislation so members can click through to the sections that I'm citing in my answer and have a read for themselves as well.

Second question to get stuck into today. If a lot owner wants to use part of the common property for their exclusive use, should we use a lease or a by-law? What are the pros and cons of each of these methods? Is there a reason we might lease the common property to an owner rather than register an exclusive use by-law? Clever question and I answered it for this member in this way. Looking at pros or cons is kind of tricky unless you know what angle you're coming from. There may be reasons why the owner or the building might prefer a lease over a by-law or a by-law over a lease. But what I can certainly do is provide the facts of each method as I see them. So when it comes to a lease, often these arrangements are more expensive to put together. You've got lawyers fees preparing the lease, you've got registration fees. Lawyers often see these as more complicated documents, particularly if they're strata lawyers and they're used to drafting by-laws rather than leases.

Leases can be harder to negotiate and I think that might be because people treat them a little bit more seriously perhaps as compared to by-laws. Leases can appear more complex in their terms. They can be a little harder to understand than perhaps the simple language that we might use in by-laws. Unless there is some complex legal problem with a lease, generally only the parties to the lease can agree to terminate it early. So the tribunal or a court could only intervene in some rather extreme circumstances where we've got big problems and that's quite different to where we have a by-law in place. Leases will have a defined or a fixed term and certainly a lease would require an assignment to take place if the owners of the property we're going to change.

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**Amanda Farmer:** Now a by-law on the other hand, whilst it ultimately has the same effect giving exclusive use of part of the common property to an owner, it's probably cheaper to draft assuming that you have an experienced strata lawyer engaged. So for them it's really just par for the course, another the by-law out the door. By-laws may be easier to negotiate. They might be easier to understand for those reading them. The owners corporation with a special resolution and with the consent of the owner who has the benefit can agree to amend or repeal the by-law. This is probably the same for a lease. A special resolution is required to make a lease and in my view to amend or end a lease as well. The owners corporation would have to agree to that as well as the lot owner who has the benefit onto the lease. The tribunal can amend or repeal an exclusive use by-law by way of order. So there's a process in the act. Many of you will know if an owners corporation and a lot owner cannot agree to change or repeal an exclusive use by-law or even to make an exclusive use by-law then the tribunal can make an order achieving any one of those ends.

Now the right that's granted under the by-law may or may not be for a defined period, so unlike a lease, a by-law does not have to set a limit on the length of time. An owner can exclusively use the common property, so the right will remain until the by-law is amended or repealed unless the by-law says otherwise. Of course, we can't have a by-law that will grant a right for a fixed term, not that usual, but they are out there. They do exist. Often the right is granted with no fixed term, so it will remain in place until amended or repealed.

Now, in my view, by-law breaches may be more difficult to enforce when compared to breaches of a lease. They may be taken less seriously. Tribunal outcomes are uncertain. We do have some difficulties with our legislation in New South Wales at the moment when it comes to enforcing orders of the tribunal. Some people may consider the right under a by-law to be less secure than the right under a lease and therefore less valuable. And my last thought on by-laws when compared to leases, by-laws will run with the land and do not require assignment to the new owners should the lot be sold. That's a big benefit there of by-laws of course, depending on what side of the case you're coming from.

Now I was able to illustrate my thoughts for this member in the forum by referring to an actual matter that I had been working on where I had recommended to a client a by-law over a lease because for them the by-law was more flexible, more cost effective and that was the outcome that they wanted. Now, this client was a community association leasing an area of common property from a subsidiary stratus game and we were proposing to include a by-law in the community management statement that dealt with that with a reciprocal by-law in the strata schemes by-laws. The subsidiary took the view that they preferred the certainty of a lease. So you can see how depending on what side of the case you're coming from, you may advocate for different methods.

And certainly one big important point to remember here when we're talking about by-laws versus leases, an owners corporation can lease part of it's common property to a third party, someone who is not an owner in this game. That is not the case using a by-law. An exclusive use by-law or common property rights by-law. I know I'm using the term exclusive use, but common property rights is the term our legislation in New South Wales uses, can only be for the benefit of an owner, not for a third party. So if that was your situation, you're looking to grant someone who is not an owner the exclusive right to use part of the common property, then certainly you'd be looking at a lease in that situation. So another great topic there added to our knowledge library inside the member forum.

Third question to get a little bit agitated about as I often do, what do I do when my strata manager does not allow me to access the books and records of the owners corporation? Whether that's all the records or some of the records or this is the common one, the email addresses on the strata roll. This is a problem that lots of owners I have come to learn are faced with and I believe it stems from a lack of understanding on the part of some strata managers of what the legislation says and what it means when it comes to the rights of owners to inspect the books and records of their own as corporation. Now my short answer to this question was, of course, the owners are entitled to inspect all records of the owners corporation. Our legislation makes this right very clear and allows owners to make an appointment at a time that's convenient to both the owners corporation via their strata manager if they have one and the owner to attend at the place where the records are kept and to inspect those records.

Too often I hear about strata managers who cite the Privacy Act as a reason why certain records will not be made available for inspection.



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**Amanda Farmer:** That is not a valid, legitimate legal reason to withhold any records of the owners corporation from inspection by a lot owner or important to remember the lot owner's authorised agent, whether that be their lawyer, their real estate agent, their strata searcher, a potential purchaser of their apartment that they have authorised to inspect the records. We have case law from our tribunal that says the entire strata roll must be made available for inspection, including other owner's contact details on that strata roll, including email addresses. And when I was answering this particular question this time around for inside the member forum, I was actually able to reproduce a letter that I had recently sent across to a strata manager who had refused to provide email addresses from the strata roll and I redacted that letter removed all identifying parts of course and put into the forum the terms of that letter that I had sent across to the strata manager explaining why email addresses were required to be listed on the strata roll and provided to my client who was inspecting the records, directing that manager to the relevant legislation.

And within a matter of a few days in that case the email addresses had been handed over so I could share the benefit of that letter with that particular member and of course with anybody else looking up that issue in the forum. So that's the beauty of a forum like this. Being able to share and store those templates so that members can use them in future to make their experience of apartment living a little smoother, which is always my aim.

Now, those are the three kind of random questions and answers that I wanted to bring to you today picked out from the Your Strata Property members-only forum. We cover a range of issues inside the forum. We've got a number of different topic categories and we also use tags within posts, so that makes the forum really easy to search. And whenever a member posts a question and I answered in there for them, they get an email with that answer and the alert letting them know that their question has been answered. So that all seems to work pretty smoothly. I think we've had the forum now for about three years and I think we're about to crack about 700 posts in there, so lots and lots of really valuable information. Some other topics we've covered recently, the installation of security cameras. How do we deal with a compulsorily appointed strata manager who's not performing their functions. A member asked do we need an asbestos report? Also, what do I do about my strata committee when they won't enforce the by-laws? And when is it okay to say no to a pet request? So my answers to all of those questions are in the forum.

If you want to check it out, your next step needs to be getting yourself on the waitlist for the membership. You do that over at [yourstrataproperty.com.au/waitlist](http://yourstrataproperty.com.au/waitlist). Do that now and I do mean now because I know when this podcast is going to air, we are in the week of membership open to waitlist only. You won't know where to go to join up unless you are on that list. I will be communicating only with that waitlist about the specifics of joining the membership. If you're listening to this towards the end of the week and we're in the last week of October, you had better get a wriggle on. There is more to the membership than just the member forum. Members have unlimited access to the entire templates library, all previous webinars, the eBooks library and the opportunity to book a one on one member call with me where I spend one hour with you working through your most pressing strata problem.

Now when you add it all up with the templates library, the eBooks library, the webinar, the member call, you're getting over the 3 and a half thousand dollars worth of value, but membership is nowhere near that much. Membership is just \$34 a month and you can cancel anytime. Now as I said at the top of the episode, it's always a good opportunity to jump in when the doors open and before the price goes up. [yourstrataproperty.com.au/waitlist](http://yourstrataproperty.com.au/waitlist). I always have a special bonus for the fast action takers as soon as those doors open, and I really hope you are one of those snapping up the bonus as well as all of those benefits of membership. Can't wait to see you on the inside and I'll catch you here on the next episode of the podcast. Bye for now.

**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](http://www.yourstrataproperty.com.au). You can also ask questions in the comment section, which Amanda will answer in her upcoming episodes. How can Amanda help you today?



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