

**Publication Date: 20 November 2019**  
**YSP Podcast Transcript: Episode 188. Can a strata manager propose their own reappointment?**

Listen to this podcast episode [here](#).

**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 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 fabulously today. I have had an excellent week in strata. How about you?

**Reena Van Aalst:** Yes. Well I've just recently returned from my holiday, which was so enjoyable. We're actually in Japan when the typhoon struck, but we were lucky that we were in a hotel that actually was both earthquake and typhoon resistance.

**Amanda Farmer:** Wouldn't we love to have some building defects resistant buildings in this country?

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

**Amanda Farmer:** Forget about typhoons.

**Reena Van Aalst:** Just something a bit below that would be good.

**Amanda Farmer:** Yes, we could learn a few things I'm sure. It is lovely to have you back and I'm glad you had a relaxing break ready to jump back into it. And as usual we are going to discuss our wins and challenges for the week. And let's kick off with what is challenging you Reena. Share.

**Reena Van Aalst:** So my challenge for this week, Amanda relates to a strata managing agent who was aware that they had been proposed to be terminated at the next AGM. And so, 3 or 4 months ago, the strata committee had gone to tender, we interviewed people and we were successful in being selected as a committee's choice for presentation at the next AGM. And the chairperson wrote to the manager and told them that this is what had happened so that they knew well before the AGM, and they were going to submit the motions, et cetera.

And when the committee received the actual AGM agenda that had all the motions, they noted that the actual strata managing agent had put a motion on to reappoint themselves. And, so of course, I was contacted by the chairperson asking is this valid? And I said, well not really because first of all, this is not a statutory motion that the strata managing agent has included. And secondly, the agent really has no authority to submit any motion on this. The strata committee has provided that consent. And thirdly, he was in a sense in express opposition to a motion that had been on to terminate them in the first instance.

So it was just one of those things, Amanda, that I thought I might just raise on this podcast for both loaners and managing agents. Now the chairperson is quite a good chairperson. He said to me that's what I thought and I was just going to rule that out of order, which I said that was the right thing to do. But I suppose that there could be other chair-people that really don't know whether or not they should put that forward, what order it should go, because I'm sure even though I haven't seen the agenda, I'm sure that the order would have been to reappoint them first, which then means that any subsequent motion to terminate them wouldn't have gone through or would have caused some difficulties. I was wondering, Amanda, if you've ever had in your dealings with various buildings that happening before?

## YSP Podcast Transcript: Episode 188. Can a strata manager propose their own reappointment?

**Amanda Farmer:** Yes, absolutely I have. And I have a vague recollection that we might've discussed this on the podcast before, but I can't quite put my finger on the episode number. If I do find it, I will slot it into the show notes for this episode.

But I have had exactly this situation arise in a circumstance where I was acting for lot owners and they had an agent who they felt had not been performing. They had obtained a quote for a new agent and they'd got some support from fellow owners to appoint the new managing agent at the end of the current agents' term, and exactly the same thing happened. The notice of general meeting was issued and there was not only our motion for the appointment of a new managing agent that we had requisitioned but also a motion for the reappointment of the current managing agent.

And at the meeting, we asked the question, "Who asked for this motion to be put on the agenda"? If it was a lot owner, there should have been an explanatory note saying, which lot, propose the motion and why, and if it was the strata committee, then there should be some record of the strata committee making that decision to put the motion on the agenda. If not in a formal committee meeting, then no doubt there'd be emails, the committee saying, "Hey, we've considered the agreement of ABC strata managers. Let's put that on our agenda."

Neither of those things had happened and as you say, Reena, it's not a statutory motion that is mandatory for the agenda. The strata manager quite openly admitted, confessed if you like that he put the motion on the agenda and did not have any instructions from the strata committee or a lot owner to do that.

And under my questions, he was understandably a little bit unsure as to whether he had the authority to do that or not. And I did ask whether there was some clause in his agency agreement that allowed him to put motions like that on the agenda. His answer was, "Well, we want to be reappointed".

I said, "Well, that's not a good enough reason to go putting your own strata manager motions on the agenda". So the chair in that case actually ruled the motion out of order and said there were no requests for this motion. No lot owner has requested it. No authority from the strata committee. The motion is out-of-order leaving the motion for the appointment of a new managing agent.

So something for strata managers to be really, really careful of. And I know that some of you see it as par for the course. Our agreement's coming up, we want to be reappointed. We'll just slot a reappointment motion onto the agenda. Make sure you have the authority of the strata committee to do that if that's what you're doing. Or a lot owner is requisitioning that motion.

**Reena Van Aalst:** Yes, Amanda. In this case, it was very clear from 4 months before the meeting was held that the strata committee were putting it out to tender. They weren't happy with the service of the strata managing agent and then they would be proposing a new agent on the upcoming agenda.

So it was about I think 4 or 5 months in timeframe between when the decision had been made and when the managing agent had been selected for inclusion quite sometime before the agenda had gone out maybe 2 or 3 months. So it wasn't something that perhaps was done at the last minute by the agent not knowing that the community wasn't happy or that they had other proposals in terms of who they wanted to reappoint.

**Amanda Farmer:** Yes. I think you raised this a couple of weeks ago, Reena. When you said these three-year terms now maximum three-year terms in New South Wales are I think making some strata managers a little bit nervous and no automatic rollovers, as we know. Only the strata committee by resolution can extend the appointment for successive periods of 3 months. I think some strata managers are a little bit anxious about that and perhaps not thinking through the legal ramifications of proposing motions like this. So good reminder.

Okay, I'm going to move into my challenge for this week, and this week we actually have a listener question. This is a question that was emailed through to me by Bonita. Hi Bonita. Bonita asks, "How long after an AGM should the office-bearers for the new committee be elected? Is there a time limit that is stipulated"?

## YSP Podcast Transcript: Episode 188. Can a strata manager propose their own reappointment?

**Amanda Farmer:** Now I have had a similar question in a slightly different context, Reena, and you may have as well. Do we need to hold a strata committee meeting immediately after the annual general meeting? Is there some kind of a time limit that requires that to happen? Have you got any thoughts on this one?

**Reena Van Aalst:** The committee obviously is reelected at the AGM, Amanda. The previous members who held those office bureau positions no longer have them. So the fresh committee either with same or different members and that committee then has to hold another meeting in order to be able to elect their office-bearers.

Normally agents do that straight away because everyone's there anyway. It's cost-effective, it's time effective. And sometimes we find that the people that want to go on the committee, aren't necessarily there. They've already consented in writing, they've been elected. Sometimes, Amanda, we may not have a quorum, so we've had this happen several times where the committee is reelected, but those people aren't actually physically at the meeting. They've consented but they're not there. So we've had to then hold another committee meeting when they have returned to be able to elect the office-bearers.

The other issue is that you can't assume that those people will be reelected, and you can't sort of have acting members, et cetera because you don't know who's going to be on the committee and therefore you can't make an assumption that they are going to be reelected and you can put those office-bearer positions on the agenda saying that so-and-so be elected as chair and so-and-so be elected as treasurer, secretary, et cetera.

**Amanda Farmer:** Yes.

**Reena Van Aalst:** So as far as I'm aware, there is no time limit. It's the next strata committee meeting, which was what I mentioned are usually held straight after the AGM, and they're usually very short meetings because you've already had an AGM beforehand and usually the only 2 motions are to confirm the last committee meeting minutes and to elect office-bearers.

**Amanda Farmer:** Yes, it's Section 35 in our New South Wales Act, subsection D that provides, as you say, Reena, the strata committee members vacate their positions at the end of the meeting at which a new committee is elected. So, if those members the way I see it, are vacating their positions, then you may well have a new strata committee, but you do not have office-bearers elected until you hold that first strata committee meeting and conduct that election so you don't have a chairperson, a secretary or a treasurer.

Now of course, if those positions are delegated to your strata managing agent, your strata managing agent has the power to exercise those functions under their agency agreement. Well, that's great, things are not going to come to a standstill. But in my view, it is important for other owners to have that certainty of knowing who is their chairperson, who is their secretary. If that person's going to be a point of contact for residents for example, because that person lives on-site, then that's a good thing to determine fairly quickly and like you Reena, in my experience, it is very common for that first committee meeting to be held immediately after the AGM with that very short agenda. But otherwise no, there is no time stipulated in the legislation for that meeting to occur.

**Reena Van Aalst:** That's great.

**Amanda Farmer:** So hope that helps you, Bonita. Thank you very much for that question and as always, Reena and I are happy to receive listener questions. Feel free to email them through to [amanda@yourstrataproperty.com.au](mailto:amanda@yourstrataproperty.com.au). We learn from you what it is that makes your life in strata that little bit easier, and we're happy to help. Shifting over to your win for this week Reena.

**Reena Van Aalst:** Well my win Amanda relates to renovations, a bathroom renovation, which we know is not deemed to be considered a minor work under Section 110 of the legislation, and we had an owner who wrote to us and said, my tenants moving out, I want to install in a new bathroom etcetera. So we advised the owner that she needs to actually obtain a common property rights by-law as this involved waterproofing and therefore was necessary for her bathroom renovation to be considered. She wanted to ask when the AGM was and I said the AGMs not until the end of the year and therefore she would have to pay for the cost of convening her own meeting. She didn't agree, she didn't say anything.

## YSP Podcast Transcript: Episode 188. Can a strata manager propose their own reappointment?

**Reena Van Aalst:** And then next thing we found out that she started doing the work because there was a lot of noise and the building has a building manager and he could see from footage that there were materials being brought up again that the lift being covered, and again there was a renovation by-law that was in place in terms of obtaining a bond and providing conditions relating to who the contractors were. Amanda, their insurances. And none of that happened because again, she didn't let us know that she was starting.

And then to add insult to injury, they actually started to cause water damage to the apartment below, so we had so many issues. Apart from noise, apart from telling them not to do it, there was water leaking into the bathroom below. So we wrote to them. In innocence, she was unable to respond. Someone else on her behalf was responding.

Anyway, so back and forth, we said that if you don't stop, we're going to go to mediation. So we sent in an application for mediation and then she again feigned surprise as to why even though we had given all the reasons as to her bathroom renovation being an alteration to common property. So, mediation date was set, and she said that, "Are there any conditions upon which they would consider not going to mediation?" We said, "Only if you provide a by-law", and she then asked, "If she could be given the opportunity to submit a by-law by the next AGM, which is coming up and that mediation should be put on hold"?

So the strata committee agreed and we said, "Okay, we won't proceed to mediation". At this point, we advised New South Wales Fair Trading of that decision not to withdraw the application but to put it on hold.

So, I think it's actually a good outcome so far because at least it saves costs for the owners corporation to go to mediation. We don't know what's going to happen with the other owner that's had damage at this point. We've written to them about that and said that we've launched an application for mediation. We would be raising that, but until such time that occurs, all the by-law is passed we're not really able to really do very much because it's really between her and the other owner anyway. When you consider the fact that the damage is not being caused to the ceiling as a result of any of the issues the owners corporation has failed to do in terms of a statutory obligations to repair and maintain common property.

**Amanda Farmer:** Now lots and lots in that. Can you tell me this Reena, has she finished the work?

**Reena Van Aalst:** Oh yes. It was all done.

**Amanda Farmer:** Was it all done and dusted?

**Reena Van Aalst:** All done and dusted. Yes.

**Amanda Farmer:** So that would be the reason why you went through the mediation process and you didn't seek an urgent order for her to stop work?

**Reena Van Aalst:** Yes, because by the time we realised what she was doing, it was already finished.

**Amanda Farmer:** Okay. And just tracking back to the status of this kind of work. You said Reena, it's not minor work under Section 110 now that is 110 in our New South Wales Act. And you'll find that subsection 7 of 110 says that this Section does not apply to and it lists different types of work. And one of those is work involving waterproofing.

Now work involving waterproofing doesn't actually, if you have a look at the other sections of the Act about cosmetic work and about improvements and enhancements to the common property, it doesn't otherwise come up under those other sections, so the view that I take is that it then falls into the category of the type of work that requires a special resolution and a by-law. And interesting that you are able to put that mediation application on hold. I wonder how long Fair Trading will be willing to hold that one in abeyance for you?

**Reena Van Aalst:** Yes, that's a good question, Amanda. Because we did advise him that the AGM would be held in December and this occurred in October, so maybe they might have a time-limit. They didn't say that it has to be done by X.

**Publication Date: 20 November 2019**  
**YSP Podcast Transcript: Episode 188. Can a strata manager propose their own reappointment?**

**Reena Van Aalst:** It's a very good question actually. We'll see what happens if we don't get the by-law. I can update you further on the track if we don't get the by-law and we do have to resume the mediation. Is it a whole new process again or will they just say, okay, well does now give you a new date?

**Amanda Farmer:** Yes. But definitely, a smart way to do that and try and avoid the costs associated with that mediation and ultimate litigation. And, will it be the lot owner who's preparing the by-law or has she agreed that the owners corporation can do that and she'll pay the costs?

**Reena Van Aalst:** So we had already provided her with a whole range of lawyers at the time. That when we told her that she needed a by-law we said, "There's strata lawyers, there is a whole panel of them that we use." So we've asked her to do them and we hope that it will be forthcoming. But again, we'll see what happens in terms of whether or not she does honor her obligation to submit the by-law because I think by now, it's still early days, it happened in mid-October. Hopefully, by the end of this month, we should have that by-law.

**Amanda Farmer:** I'd be very interested to see if there is a clause in that by-law that makes her responsible for any consequential damage to lot or common property as a result of her works. That would be a standard in my view, clause in a by-law of this type. It protects the owners corporation. It's what the owners corporation should be looking for when lot owners are providing by-laws. And if I was your owners corporation, I'd be making very clear, that clause applied retrospectively to cover the damage that has been done to the property of the lot below.

**Reena Van Aalst:** Exactly right, Amanda. That's what we were going to make sure was included. But I'm glad you've mentioned the retrospectivity aspect of it.

**Amanda Farmer:** You don't want to have a fight about that down the track.

**Reena Van Aalst:** No, and also you've just mentioned, Amanda, the other issue is that there can be damage to this apartment now, but who knows if there's going to be damage to anything else further down the track?

**Amanda Farmer:** Yes, absolutely. Well, thank you for sharing that Reena. Some creative ways for dealing with disputes and I'm interested to hear how that one pans out.

**Reena Van Aalst:** Yes. I'll keep you posted Amanda.

**Amanda Farmer:** Now moving into my win for this week. I actually want to share with our listeners, our strata manager listeners, in particular, a really exciting event that is happening in February next year, February 2020. This is the 15th annual Australian College of Strata Lawyers, Strata Law Conference. There you go. There's a mouthful.

Now I do sit on the Council of the College and I am a fellow of the college and most of our experienced esteemed practitioners, members or fellows of the College and we convene a fabulous conference around February each year and next year we would love to see some strata managers attend our conference. We think the content is highly relevant to the increasingly complex issues that are facing our strata managers across the country.

So this is a national conference and we do have lawyers presenting from all of our various jurisdictions on the hot topics arising from their home states. The conference next year is in Noosa. Fabulous location. It runs from Wednesday the 19th of February to Friday the 21st and the way I see it, it's a wonderful opportunity for those of us lawyers who are working with strata managers and often we work with our regular strata managers that those who we do quite a bit of work for to get together, do a bit of networking, enjoy some really quite high-level content I think it is, but very engaging, delivered by some expert practitioners and I know that it really sets me up for the year on what the important issues are facing us in our sector. And Reena, I have already issued my invitation to you and I can confirm that you'll be with us. I'm very excited.

**Publication Date: 20 November 2019**  
**YSP Podcast Transcript: Episode 188. Can a strata manager propose their own reappointment?**

**Reena Van Aalst:** Yes, thank you, Amanda. I do recall it used to have a different name. Was it called ACAL previously?

**Amanda Farmer:** Yes.

**Reena Van Aalst:** I think I went to one many, many years ago with another fellow experienced strata manager and I did find my time at that conference highly informative and engaging because it's really geared to cases, to legislation, to application and even getting ideas from other states.

Even if you may not have people speaking about your particular issue from your state. There are things that we can all learn from, from other States in terms of our that I practice and practical application for managing agents. So yes, I'm definitely looking forward to going to that strata next year.

**Amanda Farmer:** Yes, my pleasure. The conference program is out and I will put a link to that in the show notes for this episode and you'll see it is jam-packed. We're talking about ethics for strata practitioners. We're talking about the enforcement of by-laws, the democratisation of energy. Of course, we'll be covering off building defects. There's a session on the content and requirements of strata management statements and building management statements.

So I know that listening to this podcast we have a lot of clever cookie strata managers and if you're feeling like you need a conference that's got some quality educational content with some really meaty papers prepared by legal practitioners that you can take away with you, then this is going to be the conference for you. So, Reena and I would love to see you there if nothing else come and enjoy. Some time with us in Queensland. Come and say hello.

**Reena Van Aalst:** Yes, it sounds wonderful. Noosa is quite a nice city actually.

**Amanda Farmer:** Yes. Looking forward to that. So that's the 19th to the 21st of February 2020 and certainly taking registrations now, so I'll put that link in the show notes, but looking forward to seeing many of you there.

I think that is about it for this week. Reena, anything else?

**Reena Van Aalst:** Nope. All good, Amanda, thank you.

**Amanda Farmer:** I need to wrap-up. I'll catch you next time.

**Reena Van Aalst:** See you then. 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](http://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?