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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, and welcome to Episode 200. I am Amanda Farmer and I have been your host for the past 4 years. Each week, I'm with you demystifying the legal complexities of apartment living. We have had our guest experts, I have shared my own learnings as a strata lawyer, practicing in this crazy world that we call apartment living. And, I have debated our practical day-to-day challenges with my co-host, Reena Van Aalst.

It has been a fabulous 4 years spending each week with you. For those of you who have listened to the podcast from episode number 1, wow, and thank you. Thank you for your loyalty and your interest in what we have to share. If you're new to the podcast, welcome. There is no better place to start and we are not going anywhere anytime soon.

Today, I am bringing you part 2 of YSP Live 2020. I delivered part one last week in Episode 199. If you didn't catch it, I strongly recommend you go back and start there. YSP Live 2020 was a special live event online, with members of the Your Strata Property Membership Community recorded just a few weeks ago. It was an opportunity for our members to ask questions, to debate issues with myself and Reena.

And, the opportunity was given to a few members to be featured, and today you're going to be hearing directly from those members. We have Bruce, Carol, and Margaret, each working through strata challenges of their own. A very special thank you to all of you for agreeing to take part in the members only call, and also agreeing to be featured on this episode of the podcast.

After hearing from our featured members today, you will then hear myself and Reena open up for general Q&A. From those members who are on the call with us. We have about 10 questions and answers for you today, including what protections are available for strata committee members who are concerned about personal liability? Who insures a renovated kitchen? Can general meetings be held by paper vote? What is the process for strata committee elections? Those questions and answers coming right up for you.

Now, I do want to provide a couple of clarifications just at the top of this episode. You'll hear Reena talk about a challenge relevant to a waterproofing certificate, and you'll hear me reference this week's episode of the podcast. The podcast episode I'm talking about is Episode 197. If you want to head back there and learn a bit more about waterproofing certificates, and the importance of knowing that your waterproofer has the correct license. You can check that out at Episode 197.

And, when we jump into some Q&A from members on the call with us, Reena and I answer a question about a noise by-law. And, I do want to clarify that I have since gone back, and had a look at the terms of the model by-law relating to noise. And, it does refer to noise created on a lot of the common property. So, just bear that in mind when you hear that section of the call. We had a bit of a question mark over that one.

But there will be a link as always, plenty of links in the show notes for this episode. We link to the relevant legislation we have discussed, and any previous episodes or resources that we've mentioned. Over at [yourstrataproperty.com.au/podcasts](http://yourstrataproperty.com.au/podcasts), and you will see this very special Episode 200 in the list on that page.

Now remember, if you do want access behind those membership doors, the place you need to be is on the wait list, [yourstrataproperty.com.au/waitlist](http://yourstrataproperty.com.au/waitlist). As a member, you too can take part in these calls, as well as enjoying all the other benefits of membership. And, you'll hear me refer to the forum quite regularly in this episode.

**Amanda Farmer:** That is the place where members are logging on, asking questions, and getting that one to one guidance from me. Having their most pressing strata problems solved as they arise. Now sit back, relax, enjoy this part 2 of YSP Live 2020, an inside look at or listen to our special members only event. This is Episode 200. Enjoy.

We are now going to head over and start deep diving into a few questions, that members have very kindly put up their hand to say, "Yes. I'd like to be part of the broadcast." And, we're going to have their mic and their video on. And, I just take my hat off to these members, for agreeing to be part of it. I don't think Reena and I are scary, and we do this all the time. So, we're kind of used to broadcasting but I know it can be a little bit intimidating, at first if you haven't done it before.

So, thank you to Bruce, to Carol, to Margaret for joining in on this part of the segment. We might spend about the next 20 minutes or so deep diving into their problems, and we'll invite them on. And then, we do have another half hour to get into the questions you've been putting in the chat box, and some others that have come through earlier on email. So, we ask to run until 1:30 if anybody's wondering about that.

But right now, I'd like to welcome one of our very brave members who has agreed to broadcast with us today, and that is Bruce. Bring on Bruce.

**Bruce:** Hello Amanda and Reena.

**Amanda Farmer:** Hello Bruce.

**Reena Van Aalst:** Hi Bruce.

**Bruce:** It's exhausting just sitting, listening here, the podcast's more relaxing because you can walk along. But, they always solve some problems and maybe raise a few others. So, the background to my question.

**Amanda Farmer:** Go, for it.

**Bruce:** I have owned in a strata, which is almost 20 years old. For about 6 and a half years. Built by a very reputable developer, a high owner occupier rate. And, has had relatively few problems, but it's starting to after 20 years lifts for example. So, there's been a relatively small number of apartments sold and renovations done, due to the quality of the original work.

This is starting to change though, which has proved a little bit problematic, as owners can get frustrated by the time it takes to get approval. Where the precedent applies to committee decisions, need for by-laws, for lots of bonds, et cetera. So, some people haven't known or haven't wanted to know. And, just go ahead.

So, the question is about how strata committees, and I'm on the strata committee. But, one of the newer people on the committee, should develop processes to support decisions in an appropriate timeframe. And, whether as I've heard one of our local stratas, have put in place the development of an overarching by-law to make the process easier.

Is a good option whether you would recommend that. And, one of my colleagues that I volunteer with strata committee colleagues, we talk a lot about whether communication or processes is more important. He thinks process is, and I'm coming around to that, but they're probably both important. So that's, is the question clear enough?

**Amanda Farmer:** Yes, I think it is. Thank you Bruce. And, it's a very good one. It's one that comes up regularly, and I think even more so since we've had, at least in New South Wales, our 2015 Act. Which, has changed the requirements around approvals for renovation works. So, we have our cosmetic works, we have our minor works, and then we have our other works. Which are not called major in the legislation, but the lawyers tend to call them major works.

And, there's a lot of confusion around how to approve things now, and how that should be communicated if you like, to other owners and what processes should be put in place to make sure that, that's clear to everyone. If, you haven't jumped into the

member forum recently, there's a really detailed getting more and more detailed discussion. Going on over there with member Sandy.

And, if you look up her thread, there might be a couple of threads now about lot renovation works. She's in the middle of a big redraft of the by-laws for her building, and she's focused really closely on how we deal with renovations going forward. What is the process that we should set out in our by-laws? That we should ask residents to be following, if they want to do these works.

And her and I, as well as some other members, have had quite a bit of back and forth about what our legislation means, where the relevant sections are, how do you categorise different types of works? So, definitely head over there. From my point of view, and then I'll hand over to Reena. I think yes, there is a lot of benefit in having what we would call a Global Renovation Works by-law, that sets out the process for works.

It makes very clear what are cosmetic works, that do not need approval. What are the type of works that you can just go ahead and do? And, you can refer to Section 109 of our Act to give you some guidance, about cosmetic works. What are minor works, what are the works that you only need an ordinary resolution, at a general meeting to do? And, should we delegate to our strata committee the authority to approve minor works? Because if you're going to do that, you should put that in the by-law.

That the strata committee is delegated the responsibility to approve minor works. So, you need to list the types of works that are minor works, in Section 110 in our Act will help you with that. And then, what are major works? Now from a legal perspective, certainly anything that affects the external appearance of the building, anything that impacts waterproofing, and anything that affects the structure of the building is major work. And, should have its own special resolution.

And in my view, by-law. If it has its own by-law, then you can always trace through the register, through the common property title, who has done major work? So, that if there's a problem, you know who's been approved for major work, and who hasn't. The answer to that is who's got a by-law on the register. The legislation doesn't say you need a by-law. It does say you need a special resolution if once you peel away, that it's not cosmetic, it's not minor. The only thing that's left is major and a special resolution is required.

But, a question that has come up and you'll see this in the forum is where does it say you need a by-law? It doesn't, but the lawyers, and I'm one of these, definitely recommend it for that traceability purpose. So, you've got one global by-law that sets out the process. And then, if someone falls into that category of major work, then your by-law is telling them you must submit your own specific bespoke by-law for your major work. Reena, anything to add?

**Reena Van Aalst:** Some buildings actually Amanda, have undertaken a, I call them blanket by-laws. For, bathroom renovations for example. Because, anything that affects the waterproofing of the building, has to have its own by-law. And, because when people renovate and they always come do their kitchen, bathroom. And, rather than having a general meeting every time, and then having special by-law drafted by a lawyer. And then, having all these different by-laws, or just on the study of title through consolidations as well.

That they're now doing it a blanket by-law for the bathrooms, and therefore giving strata committee the power to approve such applications, pursuant to the terms and conditions of that by-law. The other thing that I've actually found out Amanda just recently, is that when you're doing waterproofing, you actually have to have a waterproofing license. It's not a plumber, and a waterproofing certificate should be provided.

Now, we've had an instance situation just recently, with someone undertaking a bathroom renovation without consent, even though they had told us what they had intended to do. And we asked them the extend of the work, and it clearly involved removing the bathroom tiles and the bath tub et cetera. And, then obviously doing waterproofing. And then, when she decided to submit a by-law, we asked obviously for all the certificates from her trades person.

The license, insurance, and at first, the license was in a different name to the contract. Whoever did the entity was a company, and the license was an individual. And, that was all fixed up. And then, we got a waterproofing certificate that someone just went, we

said, "where is it?" And, then we looked at Fair Trading. And, it's a separate license that you need to have. It's not just a Plumber's license, or floor and wall tiling license. And, so that person has gone to the website and just Googled it. And, you can get an old 2013 version of a waterproofing certificate. That now just filled out, which obviously we're not going to accept. But-

**Amanda Farmer:** And that, I think there's detail of that in this week's episode of the podcast Reena. That one's gone out this week if anyone hasn't caught that yet.

**Reena Van Aalst:** Yes. So, I think it's really important to sort of streamline the processes Bruce has suggested. To make it easier for people, but also to have a clear documented record, of who's done what. So, in the future when there's a leak from one apartment into the other, then instead of the owners corporation having to foot the bill, that owner will have to be responsible to make good on the damage.

**Amanda Farmer:** Just on your point Reena about delegating to the strata committee, the approval of waterproofing and doing that under a blanket by-law. I'd be a little bit cautious of that, because I'm not sure if we look closely at the Act that, that's legal. Because, I think the act says you do need a special resolution for each time you're going to deal with waterproofing.

And, if the legislature intended for the act of authorising waterproofing work to be delegated to the strata committee, they would have said that. They would have said, "and this can be delegated to the strata committee." So, I understand there's a by-law, a general by-law, but I'm not sure that that's going to meet the legislative requirements to approve the specific work being carried out. And, it does say that.

**Reena Van Aalst:** Yes, that's right. Bruce said as well, but apparently they got advice. So, I think a compromise would be to give everyone their by-law that wants to do bathroom innovations. So, rather than having to go to a lawyer and draft up, get it-

**Amanda Farmer:** It's a template.

**Reena Van Aalst:** Yes, that owners can use that template maybe.

**Amanda Farmer:** Yes, I like that.

**Reena Van Aalst:** As another way perhaps to make the process more easier for owners. But, I mean the general main process is one that has to occur and normally at the cost of that owner, because unless the general meeting coming up, then that person will have to pay for that general meeting. Sometimes I think it becomes a problem for someone who is not wanting to pay, rather than copying the manager's time, et cetera.

**Amanda Farmer:** So, does that give you some guidance there, Bruce? Or, more questions?

**Bruce:** It does. Now, that's fantastic. It's just given me guidance, as well as enjoying listening to the podcast. I need to delve into the forum.

**Amanda Farmer:** The forum. Yes, absolutely. And I do have, before we finish up today, I do have just a reminder for all members here to make sure that you are accessing those extra member benefits. Because, I know it's really easy to forget that they're there. And, if your email account for whatever reason doesn't like my emails, maybe I send too many. And, you're not getting them, then you might not see what's going on in the forum. And, but yes, remember to jump in there. So, I've got a little reminder about that for everybody.

A few questions coming through specifically to this topic and I can see other questions which hopefully we'll get to. Gerry's saying, isn't waterproofing work structural? And, therefore major work requiring a special resolution? Can it be delegated to the strata committee? So, hopefully I've just answered that Gerry. And, it's not so much that it's structural. Gosh, I don't do enough home-building act work, to go back to the definition of structural. But, it is definitely work that is not cosmetic and is not minor.

It is expressly excluded from Section 110, so that's why we as lawyers put it in the category of major work. We call it work that can only be approved by a special resolution, in the same category of external appearance. And, structural waterproofing is the third category. If, you know more about building than me, you might say, "waterproofing has some structural element." I'm not sure.

**Reena Van Aalst:** I should have one quick comment to make Amanda, which is something that just come across my desk last week. Air conditioning units are part of the minor renovations in the Act, on Section 110. Legal advice given to an owner said, "Well hang on, it does affect the appearance of a law." So therefore should be covered under a by-law. So, there's other anomaly as well with that particular installation.

**Amanda Farmer:** Yes. Really good point. And, that would be because you can't approve work under 110 if it needs to be otherwise approved. So, it falls out of 110, if it affects external appearance. Absolutely, yes. Good point. Okay. Thank you so much Bruce.

**Bruce:** Thank you.

**Amanda Farmer:** The very lovely Richelle is going to turn you off now if that's okay.

**Reena Van Aalst:** Bye Bruce.

**Bruce:** See you later. Bye.

**Amanda Farmer:** Thank you for your question, and we are going to welcome Carol now. So, Carol is going to, another one of our very generous members. Who, has agreed to grace us with her presence. If, we can get Carol on the call.

**Carol:** Hi there.

**Amanda Farmer:** Hi Carol.

**Carol:** Hi Amanda, hi Reena.

**Reena Van Aalst:** Hi Carol.

**Amanda Farmer:** Welcome. It's lovely to have you. We'll jump straight into your question if that's okay?

**Carol:** Okay, well I'm in a small lot, only 8 units. We have the perennial at the moment parking violation problem, but it's not really a problem because nobody cares.

**Amanda Farmer:** It's not a problem for them. It's just a problem for you.

**Carol:** That's right. And the by-law is quite clear. Nobody may park in a visitor's park from more than 16 24, that's never come up before. People do park there occasionally overnight, if they come and they stay overnight. Nobody cares. We've got 2 parks, and there's never 2 cars there. Never ever. People just don't use them. So, now we've got the situation where a co-tenant is living who wasn't living here before. And, his car has been there 24/7 since before Christmas.

The committee did say, "we've got a few things to say. Via the strata company, we'll throw this please, by-law, dada. You can't do this and leave it at that." My co committee member, in her wisdom, she's much better at personal relationships than I am, has held off sending that. Because, the person who is in violation is not an approachable person. And, the question is; is it ever better to put up and shut up? And, assume that this problem will go away?

Because, this person might not be there for much longer. Rather than risk the cordial relationships we have, with most of the people here. Because, it could become quite spiteful. For the lack of a better word. And, nobody's complained.

**Amanda Farmer:** I'm just going to jump in there Carol. Because, you said that this person who is in breach of the parking by-law, is a co-tenant. So, they're living there with someone else or they're there for a short time. You haven't seen them before, I suppose. Who is the actual tenant, or the owner, or the person that they're living with? And, is that person approachable?

**Carol:** No, that's the person who is not approachable.

**Amanda Farmer:** Oh neither. So, the person parking there?

**Carol:** Really doesn't have any say in it. As far as I can tell, it's the owner who lives there. And, he is now sharing this accommodation with her. He's parking there. With her knowledge and consent obviously. She is aware that, that's a breach. But, she's not an approachable person.

**Amanda Farmer:** I'm interested to hear what Reena has to say, because sometimes I can be a little bit too black and white about this. And, I come out with my lawyers hat. But, to answer your question is it ever a good idea to turn a blind eye? Or, never if very rarely? My gut instinct to that is; no, it really isn't. And, sometimes it's hard. And, I know this myself because I live in a place where I am also on the strata committee. I'm very public with my work that I do, and I have great friends as you saw in the picture.

And, sometimes they do the wrong thing, and sometimes they're late in paying their levies. And so, and they come to me and say, "oh Amanda, how could you just, oh Amanda do you have to? Oh Amanda, and I say, "you know what? A rule for one, a rule for all." And, the minute I start saying, "well no, I had a glass of champagne with Phil. So, Phil doesn't get the letter." You're going down a slippery slope.

**Carol:** Yes. That's my feeling, because I'm more like you. This is a rule. We know what the rules are, just abide the rule.

**Amanda Farmer:** And, that keeps it easy for you too. Because you're saying, it's nothing personal. It's the rules.

**Carol:** That's right.

**Amanda Farmer:** It's not about you, and you can't be accused of taking it personally.

**Carol:** But now, now we're a month down the road.

**Amanda Farmer:** Yes. Well, things do move slowly in strata committee land. I know that. You can say it's taken a while to have a meeting. What do you think, Reena?

**Reena Van Aalst:** So first of all, I set a few questions Carol. Is it just you and one other person on the strata committee? Is it just 2 of you on the strata committee?

**Carol:** There's 3 but one lives in London.

**Reena Van Aalst:** Okay. And, do the majority agree with your proposed-

**Carol:** Of committee members?

**Reena Van Aalst:** Yes.

**Carol:** Well, the proposal between the two of us who are here, with the okay of the person in London. Was that this should just automatically go on.

**Reena Van Aalst:** Yes, but that should happen. And, that should happen.

**Carol:** But, then my co-committee member, who has great personal relationship skills, much better than mine, has not sent it. She's just not sent it.

**Reena Van Aalst:** Isn't it up to the strata manager to send it? Like why is she getting involved? I don't know.

**Carol:** No, we have to tell the strata manager.

**Reena Van Aalst:** So, the majority of the committee have decided, that this is a breach of the by-laws. And, therefore it's pretty simple, that you just instruct the strata managing agent to issue the letter. Now, the other point you mentioned Carol. The fact that no one's using it all the time. That's irrelevant. Like Amanda was saying, that could be like, "oh one person's not paying the levies.

It doesn't affect the cash flow." That's not relevant. Amanda, you can just pick and choose, which things you want to enforce, which things you don't want to enforce a rule for this and a rule for that. And, I do understand when you live in a building and people can be quite confrontational, and that's why you have a managing agent. So, you can extricate yourself from that process, and have all communications going to that person and have them issue the letter. Have any responses come back, and then deal with it that way.

And, if you have to have a formal meeting about it, then have a formal meeting where that's included. So, that there's transparency amongst all owners. That this is an issue, and that it's being dealt with. Because, I think the owners would want the strata committee to act in their best interests. And, that's not the case. If, one person's allowed to have in a sense exclusive use of common property. I mean how much is that space worth?

**Carol:** Yes, that's right. I agree with you entirely. My problem is; how do I now get the co-committee member who said, "I'll do this." She's the chair. I'll send this-

**Reena Van Aalst:** The chair person doesn't have any, their only role is to chair a meeting. That's all they can do. You and the other committee member in London have agreed by majority, tell the strata manager, "please issue the letter." By-law breach to, a lot so-and-so. It's been packed from before Christmas to date.

**Carol:** And, he can go specifically to that lot owner. Because, what we were going to do originally; is just send out a general-

**Reena Van Aalst:** No.

**Amanda Farmer:** No. If, it's a letter it should go. If, it's a notice to comply, it definitely needs to go to the lot owner. If it's a letter just giving a warning for example, or just noting the breach, then yes it should definitely go direct.

**Reena Van Aalst:** Now I think what Carol is suggesting is; do you do a general reminder to all owners saying, "this is the visitor parking or you do, do you deal with the culprit?" My view has always been, if everyone's doing the right thing, why should everyone get a letter? Like in a sense, again that's trying to dance around the issue.

**Amanda Farmer:** Carol's smiling, she knows.

**Reena Van Aalst:** Generally, just-

**Carol:** Yes that's my sentiments. Exactly. But,

**Amanda Farmer:** It's hard.

**Carol:** It's a month down the track.

**Amanda Farmer:** That's okay. I wouldn't worry about that. Things move slowly, and if you need to convene a formal meeting and

have a resolution so you can rely on that and just tell the strata manager to follow the resolution, then go ahead and do that. Now there's a couple of questions in the chat just on this particular issue or comments. Ron is saying install lockable bollards in the two spaces and open them only for legitimate users.

So, I've heard what you said, Carol, that you generally don't have a problem and everything kind of works. But, bollards is definitely an option, a very practical option for anyone who is having trouble with visitor parking spaces. And Chris is saying, "do owners corporations require a specific by-law for visitor parking?"

You don't have to have one Chris, but it's definitely recommended. If, you've got a visitor parking area, just so that new residents come in, they understand what the rules are around visitor parking. And, if you do have a problem, you can fall back on that by-law. And it sounds to me, Carol, that you've got a rule where you say no more than 6 hours in every 24 hours. One way to do it.

**Reena Van Aalst:** That's a good idea actually.

**Amanda Farmer:** Okay. Thank you so much for sharing Carol.

**Carol:** Thank you.

**Reena Van Aalst:** Thanks Carol.

**Amanda Farmer:** We are going to move on now. I'm keeping my eye on the-

Oh, yes. Sometimes the important steps are hard Carol. But, once you do this, you'll be able to do anything, take on the world.

**Carol:** Oh, thank you.

**Amanda Farmer:** Thanks so much.

**Carol:** Thank you.

**Reena Van Aalst:** Thanks Carol.

**Amanda Farmer:** Alrighty. So, thank you Richelle. We will move on now to our third very generous member who is giving us her time and her question. It's time to say hello to Margaret. And, welcome her in for the next challenge for Reena and I.

**Margaret:** Hello Amanda and hello Reena.

**Reena Van Aalst:** Hi Margaret.

**Margaret:** Thank you for this opportunity.

**Amanda Farmer:** Absolute pleasure to have you.

**Margaret:** Thank you. I'm a secretary to a small strata scheme, 8 level 22 lots. We're about to undertake a major rectification remedial work, and I anticipate we will be calling for a special levy of approximately \$120,000 per unit. The strata scheme is not sufficiently financial to service such a large amount, required for the works.

And, I suspect that not all a lot of owners will be financial. And, not able to be in a position to pay this special levy sum immediately upon being served the levy notice. In order for the owners corporation to meet the financial remuneration for the works.

Is it necessary for the strata committee? Or, strata owners corporation to take out a mortgage to guarantee the payments? Or, is it

strictly that the owners is upon each individual lot owner? For all of the payments to the strata scheme in the usual method of levies due. And, at what stage is there a requirement for quantity surveyor to assess the planned rectification works if at all.

**Amanda Farmer:** Thank you so much for that very well articulated question Margaret? And, it's a really good one for so many others who will be, or will have gone through this, be going through this. And, it's a question that comes up as a matter of course, with any building that is doing work that is of this extent. And, is going to cost this much, how do we raise the money? And, the answer to that is; it can be a couple of ways.

Yes, a strata loan, we call it in strata land here. We don't call it a mortgage, because the strata lenders don't necessarily require a registered security. They have their own special ways of doing things. A strata loan is an option and that is often a good option, if you need to prove to the contractor who you've engaged to do the work, that you have the money. That you have access to it. Sometimes contractors before they start work, and when you sign the contract.

They want you to be able to show how you're going to pay them. And, if you have decided you're going to pay by way of special levies, you might not have the money because it takes a while for people to pay. And, you may have decided they could pay by installments, for example. So, a lot of buildings do opt for the strata loan option, to be able to meet the requirements of contractors.

And, I think insurers probably have a say in that as well, and Reena will have some more practical experience of that. The difficulty, yes, you can do it by way of levies if you have a commitment from everyone, that they're going to pay on time. Because, that's the difficulty you end up in. If, people do not pay. You're then spending time and upfront money, having to recover those unpaid levies. So, you could be in litigation with owners who haven't paid their large levy, as well as being in the middle of building work.

I mean that's just going to be a headache for you. Some buildings do both, some raise the levy and have the loan there as an option to draw down on, if they need it. So, it's there in an emergency, and you want to talk to the strata specialist loan providers about that. And, what it would cost you just to have a line of credit, for example, available if you need it in an emergency.

There's a couple of podcasts, I haven't got the numbers direct at hand. But, if you go to the podcast page on the website, it feels like years ago now I spoke to Paul Morton, at Lannock Strata Finance. Strata loans and he gave a little summary of the different options that you can use to finance works. And, I've also spoken to Macquarie Bank in the past, about their options as well.

So, if you're looking at strata loan providers and how they work, those podcasts will give just you some background information. Bearing in mind, of course that I know who I'm interviewing, I'm interviewing the strata loan providers. So, take all that with a grain of salt. Reena over to you?

**Reena Van Aalst:** Yes. Well I think the amount of money has to be in the bank first, as Amanda said. Because, anything over 20,000 will require home building compensation fund insurance. It's a statutory insurance that's required, which is a government scheme. And, before you can even the contract, they will require a copy of your financials. Now I can say that someone's asked have all the reserve funds been used first? But, I think Margaret, you don't have reserve funds.

**Margaret:** No.

**Reena Van Aalst:** There's no reserve funds to use.

**Margaret:** It will probably be my estimate. A \$2 million project. And, there's probably about 200,000 that...

**Reena Van Aalst:** Yes, you're right yes. [crosstalk 00:30:05]. And, I would agree with you to get a quantity surveyor to do his assessment first, so that when the tenders do come in, some of our buildings have done that. Because, the quantity surveyor is independent of the builders. And, at least then they will know that based on this type of construction, what should the construction costs be.

And, invariably that's always been very helpful for buildings that have had that done prior, to going out to tender and getting different builders to quote on on the worst. That you know, that you're comparing apples with apples and these are the relative amounts you should be paying for that work.

Yes. The issue I found is sometimes as Amanda has suggested, you could split it up between special levy and loans. So, that the loan could be used as the initial amount-

**Margaret:** Like a safety net.

**Reena Van Aalst:** And, then the other amounts get raised. Perhaps, all the work will have to be, I mean ultimately if people don't have the money, the work might have to be delayed until the money's in the bank. But, the work has to be done. I understand. It's one of those things where people think that, just because it's going to cost a lot of money. Well that's the thing about living in strata unfortunately.

You can't decide whether you want to repair and maintain common property. It's a statutory requirement. And, I had this situation recently in a round table discussion, where someone was saying that strata is like a collection of private houses.

And often I was saying, "no, it's not. Because, if it's your own house and you don't want to fix it and it can fall around apart, you don't have to worry about it." Whereas in a strata scheme, that's not the case. And, everyone's investment is dependent on how the building is maintained. And, are there any water penetration issues, arising out of this yes?

**Margaret:** Yes major. Yes, the whole rig needs to be waterproofed. Yes. That's affecting the entirety of the building. Because it's been left for so very long.

**Reena Van Aalst:** Yes, and obviously the extent of the work, shows that, that is something that hasn't just arisen out of nowhere. It's a big job. So, it must be quite significant.

**Margaret:** It's waterproofing bathrooms. Yes. It's work that hasn't been done for the last age of the building, which is about 40 years.

**Reena Van Aalst:** Oh, dear.

**Margaret:** Yes.

**Amanda Farmer:** Well you're definitely in the right place, Margaret, to get a helping hand along the way with that. And, make sure that you're in the forum asking questions as you need to. And there's plenty of us who have been through that process there's owners, there's residents, there's committee members, strata managers who can answer these questions for you as they crop up. You were just starting on this adventure.

**Margaret:** Thank you.

**Amanda Farmer:** Let's put it that way.

**Margaret:** Yes. Thank you.

**Reena Van Aalst:** Just another question Amanda from one of our listeners about, is home builders warranty insurance required? Yes, the answer, if it's more than \$20,000 it's required. It's mandatory under the Home Building Act.

**Amanda Farmer:** For remedial works.

**Reena Van Aalst:** Yes.

**Amanda Farmer:** That's different, because I can see another comment there from Steven. That's different for a new build. If it's a new build-

**Reena Van Aalst:** Yes, it's not a new build.

**Amanda Farmer:** The 3 storey, the three-storey requirements. Yes.

**Reena Van Aalst:** This is a repair. This is on not a building.

**Amanda Farmer:** That's right. Okay. Excellent. Thank you so much Margaret.

**Margaret:** Thank you very much. Thank you.

**Reena Van Aalst:** Thanks Margaret. Bye.

**Margaret:** Bye.

**Amanda Farmer:** We are going to head over to the chat box now, and jump into all of these questions that have been coming through. If you are adding more questions, I just ask that try and keep it short. And, if you've got a few questions, pick one that you think will be of general help to everyone, who is on the call and not necessarily a really unique specific situation. Great question here from Chris.

What protections are available to safeguard the strata committee members from litigation? For example, if you don't necessarily have office bearers, liability insurance, which you absolutely should have if you can't get it. I'm a little bit worried about that.

But, what protections in the legislation are there for our committee members? Now, Chris, I know because you emailed, this question is in, I know that you're in New South Wales. And, I do want to draw your attention to Section 260 of our New South Wales Act. This is a new section that came in when we got this legislation in 2015. And, it is titled Personal Liability. And, it says that as long as the offices of the owners corporation, so the secretary, treasurer, chairperson, and the members of the strata committee.

Are acting in good faith, when they exercise their functions, then they will be protected from personal liability. And, any liability that attaches will be the liability of the owners corporation, not of the committee member personally. And, this came up in the forum recently, I think somebody asked me about good faith requirements in Western Australia (WA), and I said that they didn't seem to be similar provisions in Western Australia.

I actually think since then I've read an article that they are being introduced with the changes to WA Law. So, WA Law members keep your eyes on that. But, as long as the committee is acting in good faith, we don't have many cases, if any that I can think of, where committee members have been sued successfully. I have to say, for being negligent or for not meeting their duties. Because it's a very, very high bar. You might not be acting in good faith where you are acting expressly contrary, to legal advice.

Contrary to strata managers' advice, where you are doing something in your own self interest. And, you know what the law is, and what you should be doing. If, you're generally trying to be a good committee member, devoted and dedicated. The fact that you're here, Chris, I know that you are. Then you're going to be okay. Any comments on that one? Reena?

**Reena Van Aalst:** Well the first comment I would say is; the owners corporations should take out the insurance for committee members. For office bearers, liability. I know it's on a mandatory policy, but I think if you're acting in a voluntary capacity. If you're a director of a company, you would expect that to be the case. And in the same, in terms of looking out for an owners corporation. I think that should be a minimum, that is affected for all the time and effort, that committee members put in.

And, as you've said Amanda, it is about, I think in good faith. And, most of the time, I think people do get vilified. Not because

they're doing the wrong thing. Sometimes they may be, but sometimes it's because their own interests clash with the strata committees. And sometimes, for example, if people don't want to spend, like in Margaret's case. People don't want to spend the money because they don't have the money.

**Reena Van Aalst:** Then you'll see a text against the committee, and they're trying to do this, and they're trying to do that. When in a sense, well I call it the pot calling the kettle black.

It's really the other way around. It's people who have an agenda that are vilifying, and making allegations. Sometimes seriously against committee members, when really they're doing what is required for the building. Which, may affect people financially. But unfortunately, as I said, if you want to live in a home, go live in a home where you do whatever you want.

You're living in strata, it's not just about you, even though you might like it to be. And, when you're living in communally, you've got to take into account everybody's interests, in terms of maintaining the value of the asset.

**Amanda Farmer:** Absolutely. Okay. I hope that's helpful. Chris, we're going to move on to Steven's question, which is about insurance. And, he says, "is an originally fitted kitchen, a body corporate or owner's corporation item? Or, is it a lot owner's fixture? Which insurance policy covers an original kitchen?" Steven says his understanding is that a kitchen that has been changed or replaced, would be covered by the lot owner. While the original kitchen, would be covered by the body corporate under their insurance.

So Steven, you've used the term body corporate. I'm wondering whether you're in Queensland. So, if you are just take this guidance with a grain of salt, knowing that we are New South Wales practitioners and professionals. And, certainly in new South Wales, the owners, corporations building insurance must cover the kitchen. There's a broad definition of building, in our New South Wales legislation when it comes to insurance.

And, the idea is if the place burns down, then everybody's going to have a kitchen put back in place. Where you have a new kitchen, you should have a record of the new kitchen being approved. And under, depending on your legislation, that might be by way of a by-law. And, the terms of that by-law should say that the owner, the lot owner becomes responsible for the repair, replacement, maintenance, insurance of the kitchen. So, that lot owner as you correctly, I think your gut instinct was telling you this, Steven.

That lot owner should therefore then be responsible for anything that should happen to the kitchen, pursuant to the terms of the by-law. Not necessarily pursuant to the terms of the legislation. Does that make sense Reena?

**Reena Van Aalst:** I actually don't agree Amanda, because I've had experience with this particular thing. Where, it was actually a new kitchen that had been installed, again without consent. But, there had been evidence and it was worded in the committee meeting minutes that someone had changed their kitchen. And when there was an incident where it was flooded out, the insurer didn't care that the owner had installed that kitchen. It's deemed to be a fixture under the policy.

This is also occurred with flooding floorboards. So again, a building, everyone had carpets, some owners went ahead and installed floorboards, at the time this person has a by-law. There was a person above them in a balcony they threw down a cigarette, which landed into their balcony. It actually, the fire spread into their apartment. All the floorboards were damaged, and there was a \$10,000 excess I recall this, because it was so high. And, the person said, "I'm submitted a claim." And we said, "no, here's a by-law, his lot owner's responsibility.

And, they said, "no." It's, considered to be a fixture and we're paying for it. So, we had to pay the \$10,000 excess at the time. Well the committee agreed to anyways. So, I think the way that the insurer treats it. It's different to how the repair and maintenance issue. So, maybe that's the clarification Amanda, I'm not sure. But, insurers tend to want to pay. I don't know why.

**Amanda Farmer:** I know, yes. I actually have this on our list Reena. On our famous spreadsheet to chat about in a future podcast episode. Because, I have received I don't know if it was an email or a comment, on the website from someone who queried our

position on not lodging insurance claims for lot property damage. If, the owners corporation not having to lodge it, if they didn't want to. And, if you delve into the insurance legislation, there are some provisions there that say, if the policy covers it, then the policy holder should action the claim.

I think that's similar to what you're saying. And, I have picked this for a more detailed discussion. What I'm wondering is if you had a by-law, and this is the way that I draft my renovation by-laws, that clearly says that the lot owner must not claim on the owners corporations insurance, in the event of any damage.

Does that by-law trump the insurance legislation? Which says if it's covered then the claim must be made or forced to make the claim. Interesting, legal question. And one that would be very specific to your jurisdiction, and would need some devoted consideration. Specific to the circumstances. So, thank you very much for raising that one, Steven. For opening that can of worms for us.

**Reena Van Aalst:** It is a can of worms.

**Amanda Farmer:** Keep listening into the podcast, because we're definitely getting into, I hope that insurance claim question. You're not the first one to delve into that one. Okay. I am just scanning back over to the chat box. A question from Melanie. If, there is a change to a strata plan, a subdivision to a strata plan, and you get a new strata plan number. For the subdivision, how do you as a strata manager refer to the strata plan by which strata plan number? One for you Reena.

**Reena Van Aalst:** Well, do you have a writing one? It's the umbrella one from which subdivision came from. Is the overriding strata plan number.

**Amanda Farmer:** The original strata plan number.

**Reena Van Aalst:** Yes.

**Amanda Farmer:** Yes. That's what I thought too. I hope that one helps you Melanie. Okay, I'm back here. Ron has a question about air conditioning. The air conditioning system was not functioning for about 3 weeks of the 107 lots, one resident, a tenant wishes to claim costs. Such as hotel costs, because this person did not have the use of the air conditioning system. Can they make them smiling? Can they make that claim? Well, I think it's a bit of a stretch there Ron.

Number one; only an owner or having said that, don't know what state you're in. In New South Wales (NSW), only an owner can make a claim for damages against an owner's corporation. And, we have a very recent case law, that says that claim for damages must be made in a court, not the Tribunal. So, attendance certainly has no claim against the owner's corporation, in New South Wales.

For our harm suffering, that they have suffered due to their lack of air conditioning. Whether that, whatever the loss is, or they've gone to a hotel. That's right. Yes, they're stretching it. They're really stretching it, Ron.

**Reena Van Aalst:** Yes. Well I think it's still inhabitable the apartment, even though it's hot.

**Amanda Farmer:** Yes. Uncomfortably inhabitable.

**Reena Van Aalst:** Exactly. The first real problem, I think.

**Amanda Farmer:** Yes. Send them on their way. I think Ron. I'm just scrolling down the chat. A question from Scott. Maybe it's Scott, are residents who leave by the front gate, and stand on the footpath making a lot of noise late at night. As they are technically off the common property, I presume they're not covered by the noise by-law.

Sadly. No, they're not covered by the noise by-law. They're not on the common property, that only governs those who are, I haven't

looked it up. But, I'm pretty sure it does say on the common property doesn't Reena?

**Reena Van Aalst:** Yes, I think it does. Or, I mean those about affecting the peaceful, quiet enjoyment, usually is on within the owners corporations property. I mean, you can't dictate someone else that's not on your property. Yes, I think it is to do with-

**Amanda Farmer:** Yes, just have a close read of the noise by-law. I think it can only be enforced against residents or owners. It can't be enforcing its people who don't live there. Of course, they're not bound by the by-laws. But, I think what it actually says is that you can't disturb, the peaceful enjoyment of those who are residence owners or others lawfully using the common property.

So, whether it applies to when you're actually on the common property or not, is a very good question. Just pop the terms of your noise by-law into the forum, and we can have a closer look at that for you. But good question. From Chris, any idea when the community land management legislation will be enacted currently being reviewed? I believe. Yes, absolutely. We have drafts. I'm pretty sure, we have drafts.

**Reena Van Aalst:** Yes, we have drafts. That have just been issued, just something like sort of few days ago. Amanda.

**Amanda Farmer:** Yes, our Facebook page, I'm pretty sure I posted a link to the drafts. It was early Jan on our Facebook page, head over there. If you're not on Facebook, just post in the forum simply to remind me to answer this question for you. And, put the links to the drafts into the forum. Gerry, can a general meeting be held by paper ballot? No. Physical meeting to be held? Yes. In New South Wales. It can. Gerry.

**Reena Van Aalst:** If they've passed that motion to allow meetings to be held electronically.

**Amanda Farmer:** Yes, correct. So, we can have meetings other than in person in New South Wales. So, you could do it by email, for example. And, then that's just sending in your email vote. But, there's requirements, that have to be met in terms of what the notice says. The notice has to reference certain parts of the legislation, and you have to have passed a resolution at your general meeting permitting as Reena says, these kinds of meetings to take place. I'm just checking that we've had, a question here from Heather.

If there are no essential fire safety measures in a building, do you still have to have the motion on the agenda at each AGM. To consider the requirement for an annual fire safety statement? So Heather, I think you may have raised this question in the forum as well, where you said that the council had told you that you didn't need to have an annual fire safety statement. And, you were asking me whether that was correct?

And I said, "if you don't have any fire safety measures inside a building, well then there's nothing to check." It would be an unusual building, I would think that doesn't have smoke detectors. So, to consider the requirement for an annual fire safety statement. I'm just checking unless you know off the top of your head, Reena.

**Reena Van Aalst:** Yes, this is a statutory requirement now on the AGM agendas, but if you don't have the equipment then I don't know.

**Amanda Farmer:** I've just found it. It's in Schedule one, and I know you're in New South Wales, Heather. Schedule 1 Clause 6 of our Strata Schemes Management Act that says; you need an item to consider the annual fire safety statement if one is required. So, if it's not required, you don't need to include that on the agenda.

**Reena Van Aalst:** Amanda, just on your question about having smoke detectors. And, I think that they should be checked annually, but you don't have to lodge it with council. So, that's the different requirement in terms of whether or not you need to lodge it. If there's no requirement just apart from those smoke detectors, that are individually put in with batteries for smaller buildings, they have to be checked annually. There's no doubt about that.

**Amanda Farmer:** Ok, great. Steven is just typing in that he is in New South Wales (NSW). Steven had the question about the

insurance and the kitchen. That's great because our future podcasts, will hopefully delve a bit deeper on that for you. Steven, we had another question from Heather as well, which I thought was a really good one for our strata managers and committee members running elections. If you have more nominations than positions, for the strata committee, what is your process that you follow there Reena to elect committee members?

**Reena Van Aalst:** Well basically, if there are more nominations than the number, then there has to be a ballot. And, normally what happens is that we give out voting papers at the meeting for members, for owners present to put down who they want to be on the strata committee. So, you can put less members. Then let's say your committee has been decided at 8 and you've got 12 nominations, then you can put up to 8 people on your ballot paper, but you can't put more than that.

So if you put less, that's fine. So, that you can put 5. You don't like the other three, or we don't know anything about them. You only want to put 5 that's committed, but you can't put 9. The minute you put more than what the number is, your voting paper is disregarded. It doesn't count.

**Amanda Farmer:** Very interesting. I hope that helps there Heather, if you want to dig deeper into that, jump into the forum. Absolutely. Yvonne, if an owner has let his unit fall into disrepair, can the owner then request the owner's corporation to pay for the repairs? I'm going to assume there Yvonne you're talking about common property, that's fallen into disrepair. Have you been aware of it? I guess is my first question.

As the owners corporation, have you been aware that there is common property within this unit that needs to be repaired and maintained? For example, has the bathroom waterproof membrane failed? And, it's leaking to the lot downstairs? If that's the case, then in my view, it's not good enough for an owner's corporation to say, "oh, well the owner didn't want us to go in and fix it. The owner didn't allow us access, for example, the owner didn't respond to our calls."

If it's that kind of repair and maintenance that's needed, then it is up to the owner's corporation to exercise its rights under the New South Wales law, to get an order for access. And, to go in and do it. I've seen cases where the Tribunal has said, "no. Don't like it." It's not a good enough excuse to say, "well, that owner didn't allow us access. So, we left it for 2 years to get worse."

So, you really do need to be mitigating your loss. If, it's something different, like you were never aware of it. It wasn't effecting anybody else, it was a hole in a common wall or something, or it was a balcony door that's not locking properly. And you just, there was just no way of you knowing, I can't see how you would then be, you'd suddenly be responsible to fix it I suppose.

But, I am reading between the lines in your question that the repairs are more expensive, or they've become more difficult if not impossible. Because, the owner didn't let you know about it. I think there's a real argument there, that part of that is the owners lot owner's responsibility. Gerry, what steps can an owner take if the strata committee, has carried out improvements to the common property without the general meeting approval? Good question. I've seen this a few times actually.

**Reena Van Aalst:** Yes, me too.

**Amanda Farmer:** So, in New South Wales, we need a special resolution for improvements or enhancements to the common property. That's Section 108 of our Act. And, that includes the owners corporation. If the owners corporation is going to make improvements, you need a special resolution. If you don't have that, then you're going to, and you want to challenge that. Obviously first of all, you're going to tell your strata committee you don't have it and you need it.

Give them the opportunity to go back and get it retrospectively. I suggest the Tribunal would like to see that. If, that's not successful, go to the Tribunal probably under the general order making power Section 232. And seek an order, whatever it is that you want. Do you want the common property re-instated? Do you want the improvement removed? Do you want some boundaries around the use of whatever the improvement is? Really depends on what it is. But yes, that's the step that you can take.

**Reena Van Aalst:** So, Amanda what about having the improvement altered? Because, let's say they've done it to a taste that's not really your liking. Is that a good enough reason to say?

**Amanda Farmer:** Yes. I would say, and we're of course assuming there's no special resolution here. So I would be clear about what order I wanted to seek from the Tribunal. So, if you're the Tribunal's role under Section 232 is to settle a resolve, a dispute, or complaint. About the operation, administration, or management of a strata scheme.

So, you can be quite broad about the orders that you're seeking. If, you think it's going to resolve the dispute by changing that improvement to be a certain way, look a certain way, then put that in your request for orders. Starting with mediation of course. So, mediation might be the way to solve that one. All right. I'm very mindful of the time, and we have kept you for so long. And, you are all still here, and we've had more people coming on as we've continued. I know we haven't got through everybody's questions. There's actually a lot more than I anticipated.

So, thank you so much for participating in this live event. It's not something we've done before, but it has been very, very exciting for us. And, I am sure it is something that we will do again. And then, we have Episode 200 of our podcast. Thank you loyal listeners for your support. It is you who have encouraged me, inspired me to produce 200 episodes of this podcast. And, I'm looking forward to many, many more. At least 200 more. Bring it on. I'll catch you all next time.

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