

Publication Date: 21 July 2020
YSP Podcast Transcript: Episode 223. Committee elections outside of AGM | expired
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Intro: Welcome to Your Strata Property, the podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source. To access previous episodes and useful strata tips go to www.yourstrataproperty.com.au.

Amanda Farmer: Hello and welcome. I'm Amanda Farmer and I have with me this week, Reena van Aalst from Strata Central. Hi there, Reena.

Reena van Aalst: Hi, Amanda, how are you?

Amanda Farmer: I am great. It is lovely to have you back with me this week, my regular co-host, Reena van Aalst, as we work through our wins and challenges in strata. That is exactly what we are doing here today. Reena, as we do, kick us off with your challenge for this week.

Reena van Aalst: Yes. An interesting challenge this week, Amanda, that's come across my desk is one where a strata managing agent is being terminated in a building. And when the AGM was held, it was held in April during the Covid time as pre-meeting electronic voting. And on the AGM agenda, there was obviously a motion to elect a new strata committee.

But in the actual agenda, it says that this motion will be deferred because it cannot be considered due to pre-meeting electronic voting. So the current committee that was elected at the AGM prior is still the current strata committee. Now they want to have another general meeting to appoint a new strata committee and obviously a new strata managing agent at the same time.

And the question is whether they can still do that now or should the committee election only take place at an AGM? So I think you and I have discussed this, Amanda, and I think in the old Act that wasn't possible, but I think under the new Act, you and I looked at Schedule 1 Clause 8, which talks about what matters must be included in those the general meetings.

And I think we talked about one of them being that strata communication can now take place on a general meeting agenda. So, I wasn't sure if you've had any other queries that you've come across the matter in terms of where agents have been held in this Covid period and these have not been elected.

Amanda Farmer: Well, definitely the question of can we elect a strata committee through pre-meeting electronic voting has come up and until our amendments that came through with our new Covid emergency legislation in New South Wales, that was a little bit unclear. But now with our new regulation 71 in New South Wales and has been made clear that pre-meeting electronic voting cannot be used for an election.

So that building you're working with there Reena was definitely on top of things back in April, realising that they couldn't conduct that election because they were holding a meeting via pre-meeting electronic voting. But, of course, yes, the question now arises, what can we do about the strata committee? Can we elect a new strata committee now if we hold a regular meeting without pre-meeting electronic voting or do we have to wait for our next AGM?

So, when you raised this with me, Reena, I had a look at Section 29 in our legislation, that was my starting point, Strata Schemes Management Act 2015 in New South Wales. An owners corporation must appoint a strata committee of the owners corporation in accordance with this Act.

Then from my further reading of the Act, there was no hard and fast guidance for when to elect a strata committee. That is, of course, after the first Annual General Meeting, there is a procedure for that say for what is in Schedule 1, which is what you have referred to there, Reena. Schedule 1 sets out the motions that must be on the agenda of an Annual General Meeting. And then the motions that may be on the agenda of any other meeting, whether it be an AGM or a General Meeting.

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Amanda Farmer: And we do, for Annual General Meetings, always have to have a motion on the agenda for the nomination and election of the strata committee.

But you have found there, Reena, Clause 8 in Schedule 1, which says that you can include a motion for the election of the strata committee on a notice of a General Meeting, doesn't have to be annual general, if the meeting is for that purpose.

So, in my view, this building, Reena, can convene a general meeting for the purpose of electing a new strata committee and put the motion to elect your new strata committee, even though you're not due for an AGM. That's my view.

Reena van Aalst: Yes. Thanks, Amanda. It's very interesting in the previous Act, and I'm not 100% sure, but I think that only at an AGM could you elect a new committee. However, the general meeting could be used to vacate a committee by special resolution, which is still the case a member or the whole committee. That's an interesting that they use the words if the meeting is for that purpose because I don't think it can be for any purpose. I mean, it's just a bit strange. Are they meaning just for vacating a committee only, or? Yes, it's just interesting the way they use if the meeting is for that purpose.

Amanda Farmer: Yes. Perhaps to cover yourself, you can say the meeting is for that purpose and we just so happen to have an extra couple of motions for other things as well.

Reena van Aalst: Yes.

Amanda Farmer: But yes, remember that you also have Section 35 that provides that a committee continues in its position until the end of the next general meeting at which a new committee is elected. So, I'm sure you know that, Reena, and the building you're working with knows that that those committee members, even though they may be there for 18 months or 2 years in some buildings and may not have had an AGM where they could have elected a new committee, they are certainly still validly legally occupying their positions until the end of the next general meeting where a new committee is elected.

Reena van Aalst: Yes, that's wonderful. Thanks Amanda.

Amanda Farmer: Now, I have a very interesting question that I am bringing to the podcast from members inside the Your Strata Property online membership community, a bunch of clever cookies in there as I too often refer to them, asking me the hard questions in our online forum. This was an excellent question from a strata manager inside our community who had an unenviable problem. I'll say that when I read this, I thought, "Oh no, you poor thing."

What has happened here is this strata manager has taken on a new building and has discovered that about 6 years ago, the tribunal made orders to reallocate unit entitlements. So, somebody brought an application that the unit entitlements were unfair. They needed to be reallocated. Tribunal agreed, reallocated them, but the former manager never registered the order.

So, what that meant was the unit entitlements did not actually change to reflect the orders made. However, the former manager proceeded as if the unit entitlements had changed and levied everybody in accordance with the new unit entitlements, gave them their voting rights on special resolutions in accordance with the new unit entitlements.

But that was not actually the schedule of unit entitlements that was on the title to the common property because the order was never registered. So, this strata manager member was asking me, "Amanda, I've just realised this, I've looked at the title. I've looked at the way that the levies have been set up and how the details for each lot have been put into the software, what's shown on the strata roll and they don't match. The order was never registered. What do I do?"

Reena van Aalst: Oh my God, Amanda. I was thinking that it's so hard to get an order to change unit entitlements. I mean, very, very rare. And now you've managed to achieve that and then it hasn't been registered.

Amanda Farmer: I know.

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Reena van Aalst: Oh my God. I wouldn't want-

Amanda Farmer: I know.

Reena van Aalst: That strata scheme or manager.

Amanda Farmer: Yes. Well, the problem is that there is a section in our legislation at Section 236, subsection 7 that says that these orders must be lodged within 6 months. So, it was way out of time for this building to lodge these orders. And I took the view that without registration, without the orders being lodged with Land Registry Services, then the order is not effective.

So, I was interested to know when I was discussing this with the manager in the Forum, what the practical impact of this may have been on the building. So, for example, was the new schedule relied on for the calculation of any significant special resolutions? Would there be any disgruntled owners in the building that had the benefit of a higher unit entitlement when they shouldn't have, and have had a greater influence on the voting on a by-law, for example, a common property rights by-law, maybe. So I think if that had been the case, then there could be some real fall outs from the owners realising this.

Reena van Aalst: But also, Amanda, there'll be an impact on levies as a payment in terms of people that are paying either more or less than they need to be paying.

Amanda Farmer: Yes.

Reena van Aalst: And if there's been any sales in the meantime and new purchases and all that sort of thing-

Amanda Farmer: Yes, for sure.

Reena van Aalst: If there is any refunds that would have to have been given.

Amanda Farmer: Well, something I did suggest this manager does quite quickly was draw up a spreadsheet, showing what over the last 6 years, and there's a bit of an exercise in that, has been the difference between what, for example, Unit 4 has paid under the new schedule and they should have paid under the old schedule. Are we talking about a significant amount of money here or are we not?

And that's really, when you sit down to talk to owners about this, it would help if you are armed with that information so that you could say, "Look at the end of the day, it's a thousand bucks or it's less or it's more," and try and work through a resolution. But I could only see, in terms of correcting this, I could only see the owners corporation, if they were the ones who made the application, having to go back before the Tribunal and explained that the order had expired and see if they could somehow have the order made again.

Reena van Aalst: That's an interesting example, Amanda, if that can ... Is it even possible? I suppose. I mean, it could be, I don't know.

Amanda Farmer: Well, there would be all sorts of legal considerations there in terms of findings that had already been made by the Tribunal in the original proceedings that the Tribunal would then be bound by. We call that a 'Stoppie' in the legal context. So, it could be relatively straightforward to go back and say, "Well, Tribunal, nothing's changed."

Reena van Aalst: But I mean, could any new owners, Amanda, perhaps make applications against this order being remade again for reasons that they perhaps now would be paying more under the new schedule than they were before.

Amanda Farmer: Yes, for sure.

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Reena van Aalst: Yes. I don't know how that would work. Yes.

Amanda Farmer: Yes. So it just goes to show, the biggest problems, not so much, we say this as lawyers to our junior lawyers or our assistants, it's not so much getting the law wrong or giving the wrong advice or not knowing what the law is. It's the administrative oversights that cause the biggest problems. And I can see here how that's happened in a strata management company. And sadly, a new manager has inherited that problem. They're not the ones who created it.

Reena van Aalst: Yes. It's funny because I mean, I always check the CT when our staff are entering new strata roll just to make sure, Amanda, that what we've inherited is actually correct. So, now I'll be looking at that far more closely after this particular example you've given us in terms of another manager's experience because it's very rare to have that ever occur.

Amanda Farmer: Yes. And I imagine that's what this new, very competent manager was doing was cross-checking everything and that's how they discovered it. So yes. A real lesson there for managers too.

Reena van Aalst: Yes, definitely.

Amanda Farmer: Okay. Well on to brighter, happier things, perhaps Reena, have you got a win for me this week?

Reena van Aalst: Yes. So, we have a scheme that we met with back in October for an interview and we got on really well. And so it was obviously based on their agency agreements and expiry dates, we're now finalising the motions and the agreement. And because of a bad experience that they had with their previous strata managing agent, they came back with so many changes to our agency agreement in terms of the standard SCA document that many managers use.

And I think to the point that it was basically like a rewrite of the whole thing and in a sense took away a lot of our notifications and our powers and sort of pretty much reversed that and gave it to the owners corporation. And obviously, after looking at it closely and realising that this is where it'd be a really good fit because if there's no trust in the relationship and I can understand why. I mean, a lot of people when they've been burnt before by their manager or even in personal relationships, we're always more wary. But in a sense, I said, "Well, thanks, but no thanks, good luck with finding someone that will be able to work under those conditions."

And then they said, "Oh, no, we want to have a chat." So, we had a Zoom call and I think there's 1 or 2 changes that we're happy with." And it was like going from a whole rewrite of a document to just a few little things which we were happy with. And I said to them, in a sense, "Now our mode of management is more that we're sort of custodians of the owners corporation while we're the agent and it's not our building, it's your building. So in a sense, the more you want to take over, the more you want to do, the happier that we're going to be. We don't want to pay bills that aren't approved, that we don't know if the work's been done."

I think a lot of managers, I mean, from what I've seen and we've inherited buildings from other managers, I mean, some people have really had bad experiences and a bit of shame sometimes to say that I'm in strata when I see those types of experiences that other people have had to go through and what they have to go through to even get rid of their managing agents. And sometimes, the grief that they're put through, documents not being provided or provided in such a way that it's really hard for an incoming person to make sense of.

But I think it's sort of made me feel like in a sense when you do have trust in a relationship with your managing agent, that you can really work through most things. And this is what I know that they won't be happy with our response, but they said, "No, no, we want to work with you. We had I guess a Zoom call and we both talked about various issues."

Amanda Farmer: And do you think that's what it was? Making that time to get together with them and address their concerns. And you were able to ease their mind, maybe make them more comfortable with you and start building that trust right away, even before they'd sign the document?

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Reena van Aalst: Yes, exactly, Amanda, you hit the nail on the head because I think when you speak to me and when explain why you had concerns with the agency agreement, the way it had been amended, and also understanding why they had done that without me knowing too much about their previous managing agent, I could see this was someone ... It's like probably a prenup. I'm not sure they're legal, but you put everything in because you've had a bad divorce before, you want to make sure that all the things are covered. And I totally understood where they were coming from because I mean, I've seen many schemes that have had so many bad issues with their managing agent.

I've seen emails just recently from a strata manager who I know is quite experienced and the way he wrote this, I'm thinking, "Oh my God, I would never write like that even if I was angry with someone." And yes, I could understand where they were coming from and having that conversation.

And I think for managers, I think if there are concerns, it's just better to have a meeting, talk to each other rather than sending emails back and forth and then try and sort of see if you can come to sort of some common ground.

Amanda Farmer: Yes, really interesting how expectations can be met in setting them in the beginning if you know what I mean? If you set the reasonable expectations upfront to say, "This is what I do, this is what I don't do. This is what I promise. This is what I don't promise. This is what's in the agreement, this isn't," and being very clear about that, then immediately, you're avoiding those problems down the track where you didn't do, well, I never said I would do.

Reena van Aalst: Yes, honestly, it's like planning your divorce before you get married.

Amanda Farmer: Yes, I like that. And the other interesting thing that I see these days is that people know you or feel they know you, trust you, understand where you're coming from even before they've sat down to speak to you because of the presence that you have these days, modern companies, through social media. So exactly what we're doing here, Reena, on the podcast. I can't tell you the number of clients who come to me and don't even introduce themselves. They'll say, "Oh yes, I know you, Amanda."

And just say that I want to work with you because we've listened to you for 4 years. We understand what your philosophy is, where you're at when it comes to solving strata problems. And we're on board with that. And that is the power of the modern day. And I love that.

A lot of the hard work, I suppose, in proving yourself or explaining to new clients who you are and what you do is done simply by being out there regularly and being who you are, being authentic, of course, the buzzword, being authentic and genuine. As long as you are those things, then when people come to work with you, they're already on board.

Reena van Aalst: Yes, I totally agree, Amanda. And I think previously, there was more the referral scenario where someone that knew someone that knew someone and that's normally, I think, still very important, I think. But now in a sense, you don't have to rely on someone giving you a referral. There's also more out there about people that work in this sector that they can also look to in terms of assessing who they want to work with in the future, whether it's legal advice.

Last episode, we talked about the 3 sectors. Lawyers, engineers, and valuers. Again, it's another area where people, apart from getting referrals from someone that's used a particular engineer, they're out there and they are on your podcast.

Amanda Farmer: Exactly.

Reena van Aalst: And people actually feel that they can get some comfort hearing, listening to other professionals as well.

Amanda Farmer: Yes. Even the other way around. Hearing something then I might say or you might say, and they say, "You know what? That's not for me. She's not for me. That's not the way that I want to work with." And that's great too, because we don't want to work with people who don't want to work with us.

Reena van Aalst: Exactly. Horses for courses.

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Amanda Farmer: Horses for courses. And there are plenty of horses out there and that's good.

Reena van Aalst: Exactly.

Amanda Farmer: Excellent. Well, I love that win, Reena, thank you very much for sharing that with us.

I think there's a great learning there for strata managers when it comes to negotiating the terms of your agreement, the power is definitely in your hands, strata managers. Use it wisely.

I, too, am bringing a win to the table that relates to a strata manager. In fact, it relates to a dysfunctional scheme. What I found to be a dysfunctional strata scheme. I have been working with an owner who has been struggling to get some things done around the building, mostly when it comes to repair and maintenance, some very significant projects that need to be underway and are not.

And I had given some advice that the scheme was dysfunctional and we really needed to start looking for a new managing agent. And if that wasn't going to be acceptable to the majority of other owners, we might need to look at approaching the tribunal for an order.

And my approach with those cases is always to set aside a period of time where we try to bring the scheme into some kind of order. I might communicate with the committee or with the strata manager and try to explain that they're not compliant with the law and these are the things that they need to do to become compliant. They may or may not know that this is a breach of the Act and they need to be doing these things to bring it up to scratch and to solve the problems that my client is experiencing.

And we find that if that doesn't happen, then we have the evidence that we need to prove dysfunction before the tribunal. So we were in the middle of that process with this particular client for this building and the strata manager who I was communicating with quite regularly, much to other owners' surprise, resigned from the committee.

Reena van Aalst: Is that your philosophy, Amanda, that you get them to do their work, then they go

Amanda Farmer: Yes, ask somebody to do their job right and they quit. Yes. It is not something that my client was necessarily expecting. I have seen it happen before. So it wasn't so much a surprise to me. But this manager obviously decided that to service this building and certainly this particular lot owner who was making demands, was not what they wanted to do. And they had plenty of other buildings that they are happy to work with in their way. And this one wasn't one of them. So they resigned.

And that gave immediately my client the opportunity to put forward a manager who she thought would better service the owners and lo and behold, the majority of owners agreed and they have new management in place.

Reena van Aalst: Oh, fantastic. That's a great outcome, Amanda

Amanda Farmer: Yes. So it's one that I thought I'd bring to the podcast to share, in particular with owners who are in a similar position who are frustrated, who are going through this process of trying to make their buildings compliant, their committees, and it is not at all.

And it's quite unusual that we would say it's the fault of the strata manager. Strata managers are agents. They act on instructions. And what I think may have been happening in this particular building was that the managing agent was doing their best with a difficult committee. And perhaps to their credit again, I don't know exactly what was going on in the background, but they said, "Look, can't do the job properly. So not going to do the job." And they resigned and that was accepted. So that can be a good outcome for an owner who is having trouble dealing with a difficult committee and/or strata manager.

Reena van Aalst: Yes. It's a great outcome, Amanda.

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Reena van Aalst: I think sometimes strata managing agents, I don't know much about this particular case you're referring to, but they can get drawn in in terms of when there's factions within strata committees, then you're sort of getting pulled from one side and getting pulled from another side and you're trying to sort of not become the meat in the sandwich.

And sometimes, by trying to please everyone, you please nobody. And I think that, as long as you do your job and in a sense comply with the Act that's all a manager can do. But sometimes, when there's a lot of friction between committees members, it just become so arduous and so draining. And I think that quitting is sometimes the best and only option under those circumstances.

So, without knowing all the details, I think sometimes, when there's disharmony and you think that maybe someone else could do a better job because of different personality styles or maybe perhaps there's history. So who knows if there's been issues in the past for that owner and certain committee members and certain strata managing agents and having problems with certain owners and vice versa and then committees change Amanda and dynamics change. And yes, I think that's a great outcome, actually, that you were able to achieve there.

Amanda Farmer: Yes. So thank you, Reena. I did have a happy client there, indeed. That is all from me this week. Another busy week in strata and looking forward to the next one, I'm happy to say.

Reena van Aalst: That sounds wonderful, Amanda, I'll see you next time.

Amanda Farmer: See you then. Thanks Reena.

Reena van Aalst: Bye.

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