

Publication Date: 23 February 2021
YSP Podcast Transcript: Episode 253. : Can I force my building to have a meeting in person?

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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 today, Reena Van Aalst from Strata Central. How you doing, Reena?

Reena Van Aalst: Good, Amanda, how are you going?

Amanda Farmer: I am going very well, having a great week in strata and looking forward to getting stuck into our wins and challenges for this week.

Reena Van Aalst: Yes. Well, my first challenge, Amanda, this week relates to a strata scheme that's actually been registered in 1968 and it's in the eastern suburbs in Sydney, and what's happened is, over the years, a number of owners have enclosed their balconies and basically pretty much all the apartments on that one particular side of the building have done so over various times, but the strata plan doesn't show any enclosures, and it shows it as a balcony on the strata plan.

And what's happened since is that there's been water penetration through these windows and structures that have been erected over time, and now the owners that own those particular apartments who have bought them since they've been enclosed, which is obviously before their time, are asking the owners corporation to actually pay for the repairs and maintenance.

Now, the strata committee is saying to me, "Reena, these were done by owners over many years, there's no records of them being done, there's no formal approvals."

And so, now we're faced with, Amanda, what does the owners corporation do? Is it now responsible for these repairs or is it due to the fact that the strata plan shows them as being balconies and they've been since enclosed by owners over many, many years that now the owners corporation has to take carriage of these costs?

Amanda Farmer: Are these balconies on every apartment enclosed?

Reena Van Aalst: No.

Amanda Farmer: Or just a few?

Reena Van Aalst: Not every apartment has a balcony. So basically, all the ones that do have balconies are enclosed. That's correct, Amanda, Not every apartment has a balcony.

Amanda Farmer: Okay. And if you don't mind saying how many lots in the scheme altogether?

Reena Van Aalst: There's about 50 lots, but 33 actual apartment lots. The rest are separate car space lots on title.

Amanda Farmer: Okay. And of that 33, about how many would have balconies that are enclosed?

Reena Van Aalst: I'd say, I think about a half would, I think.

Amanda Farmer: Okay. All right. And the issues that are now arising in the common property are because of the balcony enclosures, or it's going to be more expensive to fix them?

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Reena Van Aalst: Yes, because basically, if you think it was a balcony and it's been enclosed with windows, Amanda, and large windows and roof structures over those windows, that's what's leaking now. So yes, that's what's occurring. It's the enclosed, balconies, the windows and where they meet with the framing, all that area, it's just deteriorated over time.

Amanda Farmer: Yes. Well, if a lot owner does work impacting the common property and they don't have the approval of the owners corporation to do that work, then the responsibility for the work is going to fall with the lot owner, and any common property that's damaged, affected, otherwise impacted because of their work, will be the responsibility of the lot owner, in my view.

And I don't believe it matters when that work was done. It could have been done by various owners over different years, it sounds like, in your example, Reena.

Reena Van Aalst: Correct.

Amanda Farmer: It's also sounding like there may or may not be a record of owners seeking approval of the owners corporation to do this work. If there was a record of approval being sought and perhaps the owners corporation saying, "Yes, sure, go ahead," the owners corporation may be in a difficult position where they have granted approval, but haven't done so on particular conditions, for example, that the lot owner take responsibility for any affected common property.

So it may be an important fact to tick off in your checklist of what has occurred in the past. Clever owners may be able to produce some record of approval and say that it was approved on terms the owners corporation would continue to repair and maintain.

The reason I was asking how many, and how many out of the whole building, and how many with balconies are enclosed, is because the owners corporation might want to think about, instead of going into a dispute with these lot owners about rights and obligations and whether there were approvals or not, and when the work was done, looking at the cost to deal with these problems.

There may be a commercial solution here whereby the owners corporation might agree to fund the works, because it's impacting every apartment with a balcony, on the condition that the lot owners will then, from then on, once these issues are rectified, take on responsibility for the future repair and maintenance, and will do so pursuant to a by-law and having given their written consent.

Reena Van Aalst: And currently, at the moment, Amanda, there's only one apartment that's actually suffering from a leak so I suppose it's the committee understanding what their obligations are in terms of repair and maintenance.

We've also seen, and we haven't delved into all the minute books for this particular scheme, but we've also seen, Amanda, that many approvals are given over the years, but not given through a by-law, and I've seen schemes we've taken over where the committee has allowed someone to do such an installation and said that they're responsible, but the committee had no authority to give that consent.

So I think I'll take your point about whether it's going to be a big factor in this particular scheme. At the moment, it's only one lot owner that's come to us. It's mainly the agents. What I find really troublesome, Amanda, at the moment is many property managers don't understand that if someone's done work to common property that it's not strata.

They keep saying, "It's strata, it's strata," and I'm thinking, "No, no, it's not strata." It's like, I've got another issue in another scheme where someone had installed a macerating toilet as part of a conversion from a commercial to residential lot.

Amanda Farmer: I'm sorry, installed a what toilet?

Reena Van Aalst: It's called a macerating toilet. It's got a pump and it doesn't rely on gravity feed and all that. It's really unusual. It's actually allowed in the standards. You can install it, but it's normally used in boats and things, it's not normally used in residential lots.

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Amanda Farmer: Right.

Reena Van Aalst: But when they did this conversion, to undertake the plumbing would have cost 20 or 30,000 at the time to do a proper second toilet with the proper pipe work, and fitting it into the stack. And so, now what's happened in this other scheme is the toilet has leaked 3 times into the commercial lot below, and we're trying to find out, has it been installed correctly? Has it been waterproofed, et cetera?

But the agents saying, "This is a strata issue, this is a strata issue," and I'm getting emails on the owner and emails from the agent, and I think sometimes there's a lot to learn, in terms of educating people, what is strata in terms of the theoretical point of view?

Anyone would think, yes, a window, balcony that's been enclosed theoretically would be assumed to be an owners corporation issue, but many times, when you look at these older buildings, a lot of work has been done over the years without any proper authority and approvals.

Amanda Farmer: And I think there's a real lesson here in buildings, not turning a blind eye to this work.

Reena Van Aalst: Exactly.

Amanda Farmer: If there is work going on, prevention is better than cure here. We don't want to be in a position, whether it's 2 years, 10 years, 20 years down the track saying, "When was that enclosure done? When was that toilet installed? What were the conditions of approval?"

It may seem the easy option to ignore it at the time, but we're now in the position of being left to patch together the history of these renovation works to be able to properly advise buildings, and it is complicated.

Some buildings, I find, take the view that it's all too hard to go to lot owners to do an audit of the lot and work out what's common property, what's not, what was added with approval, what wasn't, and then require the owner to sign up to or put forward a by-law that itemises that work and clearly shifts the responsibility for affected common property over to the lot owner.

Yes, that is hard work. It's tedious, it may be controversial because the owner may not give their consent. You may have to go to the tribunal to seek an order that the by-law be made, because it's reasonable in all the circumstances that it be made.

But ignoring that avenue, ignoring the availability of that solution, is only going to tie you up in knots, I think, further down the track.

Reena Van Aalst: Exactly, Amanda.

Amanda Farmer: Let us know how you go. One apartment only in that block, I think it's worth having that conversation with the owner about taking on that responsibility, and then seeing how that then plays out across the other lots, and using that negotiation perhaps as a practice, a template, for future negotiations with the other owners.

Reena Van Aalst: Thank you, Amanda.

Amanda Farmer: Thank you, Reena for bringing that one to our attention. My challenge for this week arises from electronic meetings. I am hearing more and more some frustration from communities, from owners, who tell me, "Amanda, my building only ever wants to have electronic meetings, or meetings where voting is conducted wholly by pre-meeting electronic voting, and that means that we're not getting together."

"We're not having discussions about issues. We're not able to debate motions. If I'm an owner putting forward a motion, I'm not able to speak to that motion, particularly if the voting is all done by way of pre-meeting electronic voting.

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Amanda Farmer: How do I force my building to have a general meeting, whether face-to-face or online by Zoom, but without pre-meeting electronic voting so we have the chance to have discussion and debate? What are my rights?"

And Reena, you might tell me what your experience has been here, if you're hearing this from buildings or owners, but on my reading of our New South Wales legislation, there is no ability for an owner to request, demand, require that a general meeting or even a strata committee meeting happen by a particular method.

So we can't force face-to-face meetings, we can't force online meetings, if the secretary or the majority of the committee has determined that pre-meeting electronic voting will be the way to go. Is that your understanding, Reena?

Reena Van Aalst: Yes, it is actually, Amanda. Nothing in the legislation at the moment says that it can't be done otherwise. I think the challenge that strata managers are facing now is that with this new medium, some committees are relying on a way to perhaps restrict debate and attendance by other owners.

So I think sometimes, even though the convenience is really appealing to owners corporations in terms of being able to make decisions, and the time that you can do that being cut by a substantial amount, that it sometimes is being used as a tool to restrict discussion.

And we haven't found that in our schemes. We've only had a few meetings where we've had to use pre-electronic meeting and those have been more to do with by-laws or things that weren't contentious. But in this particular example, Amanda, what about their AGM and the election of a strata committee? That can't be done.

Amanda Farmer: Correct.

Reena Van Aalst: They're probably just keeping the same committee, are they?

Amanda Farmer: Yes. So we can't elect a strata committee by pre-meeting electronic voting. So what's happening in some buildings where, thank you for calling that out, that's exactly what's happening in these communities. They're trying to restrict debate or discussion, or even prevent a new strata committee from being elected.

So they're proposing their AGM by way of pre-meeting electronic voting and simply saying, "Well, sorry, we can't elect a new committee, this committee rolls over and the positions remain the same until the next general meeting at which a new committee is elected."

It's a big problem. And owners are feeling that they're left without an option, they're left without a voice. This issue was raised inside our members-only online forum recently, and I was asked to suggest some potential solutions, and one solution that was canvassed was the passing of a by-law that sets out, a building will always have in-person voting at its AGM. Whether that's done by electronic means, or in-person, or by proxy, of course, but no pre-meeting electronic voting for AGMs.

And because that's not in our legislation, in my view, yes, you would need a by-laws to say that, and if your community all agreed that that was how you were going to run your AGMs, then I wouldn't see that there was anything wrong with that by-law. I don't think it conflicts with the legislation. And I don't think it would be harsh, unconscionable, or oppressive. I think it solves a problem.

Reena Van Aalst: Yes. I think it's actually, Amanda, being opposite, actually. It actually is less, is not harsh in a sense it's allowing people to be involved, and especially people that aren't able to use pre-electronic meeting because we haven't had this discussion previously on one of our episodes where we talked about people returning voting papers, and if they're not returned electronically, then they're not accepted.

So for those people that don't have a scanner, they don't have access to email, they are disenfranchised by not being able to deliver their voting papers electronically.

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Amanda Farmer: Yes, that's exactly right. And that is part of the problem that we're seeing. I've suggested there that a by-law that requires you to have your AGM by in-person voting, whether that's electronic or otherwise, could be a solution, or simply saying that at least one general meeting in a period of 12 months must occur with in-person voting, or in-meeting voting, I think is probably the better term rather than pre-meeting voting, whether it's the AGM, whether it's another general meeting, but I think going 12 months without any in-meeting voting is a real problem.

Reena Van Aalst: Yes, definitely. I think there's more to it, in terms of the agendas behind the purpose for these types of meetings being continuously done.

Amanda Farmer: Yes. And more people becoming savvy to that option and using it to their perceived benefit. So anybody out there who is experiencing this, or has some comments on this, or some ideas, please do feel free to reach out. You can always post a comment under our episode over at yourstrataproperty.com.au/podcast. You'll find this episode number 253 there, let us know your thoughts.

Reena, let's hear from you on a win this week.

Reena Van Aalst: So my win, Amanda, for this week, we just had an AGM last week and we had a major project being a lift replacement that needs to be done. Before we took the scheme over in June last year, we actually, the owners corporation, had raised a special levy, but only a third of the amount that was required, and as you can imagine, a lift replacement is quite a costly undertaking.

And through working with the committee, we did quite a long letter and we gave, as I had suggested to the committee, just give people the options in terms of how they want to proceed funding it because some people are averse to loans psychologically, for some reason. Some people don't find special levies hard in terms of the quantum that we need to get the project underway.

And so, basically what we did, we actually had a combination of 3 items. We had a loan, we had a special levy and loan, and then we had a special levy, and then we had to take 3 separate votes on all of those particular items.

And in this case, the loan was the most popular by far, in terms of funding, so I think for buildings out there and wanting to do work, but not really thinking about raising money, not being able to perhaps mention that at the moment due to COVID, or whatever other reasons that schemes may have for not doing major works, I think undertaking or suggesting a loan is probably the way to go, at least giving people the option to consider funding a project in that way.

Amanda Farmer: Yes. Understanding that it's available and that it might be the better option. Excellent that the community was aware of that and was able to make a decision that best suited it, and they had the quotes before them for.. They had a good understanding of what this was going to cost, the lift replacement?

Reena Van Aalst: Yes, they already had, from their previous time when they had this special levy, obviously that's going to be updated now, so we're just going to get the consultant to undertake the tender. And I think one lift company hadn't been included for some reason, so they're going to be now re-invited to be included in the tender process.

But I think, Amanda, sometimes if we just had a special levy only as an option, then people might have just said, "No, we don't want a special levy," and the lift would be then put on the back burner for another year, and in the meantime it keeps breaking down.

So I think sometimes thinking of that option, as you said, or a combination of both, some buildings prefer a combination, it's really now, I think, the way to make sure that these major projects are funded and funded in a way that people are amenable to. Although I think some schemes don't realise it, it's got to be paid back, so there will be a special levy some time to pay it back. That's the part people forget about.

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Amanda Farmer: Yes. In terms of approving the loan, Reena, do you approve the loan contract? Is that your motion, or are you simply getting an indication from owners at this stage that they'd like to fund it through this method or partially through this method, and then you go off to the loan provider and get the contract? What's your usual?

Reena Van Aalst: Oh no, we actually have... Yes. So what we usually do is we actually have the loan contract itself, which is about 20 or 30 pages, annexed to the agenda, and we also have the motions that have been provided by the lender. So some lenders actually are far more onerous in terms of paperwork that they require, which is done obviously after the loan has been approved, but they need to cite that the agency agreement is a true copy, and they need it countersigned.

They also need committee members to sign that these other committee members that have been elected on the AGM minutes. It's actually quite a rigorous process. I'm not sure if all lenders have these requirements, but the last 2 loans that I've had to arrange, yes.

So we put all the motions that we had been asked to, and in one particular case, the lender said to me, "Well, I can't see that the committee has approval to do these waterproofing works." I said, "It doesn't need approval, et such. We've budgeted for it, it's a statutory requirement, it's in our letter, insurance. We've got quotes that the committee has approved subject to funding."

Amanda Farmer: Okay.

Reena Van Aalst: So yes, they were even quite onerous in terms of, "Has a general meeting approved this?" And I said, "It doesn't need to, as such." There's no restriction on the committee to... Yes, because it's statutory repair work, and also, there's no restriction on the committee not to enter into any contracts of any magnitude in any of the resolutions, so.

Amanda Farmer: Yes.

Reena Van Aalst: But no, we run the full... Because sometimes you see a lot of lawyers actually have read the documents, whereas most people don't read a loan document, as you could imagine.

Amanda Farmer: No.

Reena Van Aalst: A lot of people don't even read the annexures, let alone a loan document, so.

Amanda Farmer: I'm not sure there's too much room for negotiation there, so-

Reena Van Aalst: No, I don't think so. It's just more-

Amanda Farmer: I just think to myself, "I can read it, but I don't know that if I go back with any changes, I'm going to be in a good bargaining position."

Reena Van Aalst: One of the questions I had was, "This is only a conditional approval. How do we know are we going to get the loan?" And I said, "Well, that's correct. It is conditional approval subject to them checking your financials and everything else." But obviously, we're not going to sign any contract with any person until we know we've got the funding, so.

Amanda Farmer: That's the key, isn't it? Signing a contract to do the work without the funding in place, that's a bit scary.

Reena Van Aalst: Correct.

Amanda Farmer: Yes.

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Reena Van Aalst: Well, we never do that, so yes, so in a sense, it is a good question, but it's not a question that we need to be really concerned with because if there's no funding, then there's no contract, and then there's back to the drawing board again and refunding it in another way, which is obviously going to be a special levy, is really.

Amanda Farmer: Yes. Excellent. Thank you for giving us that behind the scenes there. I'm always curious to know how strata managers on the ground deal with these processes, and I'm sure that's helpful for our listeners.

My win for this week, I am inviting everybody to join me this Thursday, the 25th of February, for a webinar. With thanks to Liverpool Council here in Sydney, I will be hosting one of my famous by-laws webinars, helping everybody learn how we can use by-laws to combat bad behaviour in our apartment buildings and restore peace to your communities.

So join me, free webinar, midday, eastern daylight time this Thursday. You can register over at yourstrataproperty.com.au/webinar. I would love to see you all there. If you have been on one of my by-laws webinars before, and I know many of you have, it's always a good idea to join us again, always something new to share with you.

In particular, I'm getting stuck into the situation with our pets laws here now in New South Wales, rapidly changing, every week there seems to be something new to bring to the table about pets in strata, and I'll definitely be covering that on Thursday. I'd love to see you there.

Reena Van Aalst: That sounds wonderful, Amanda. I think those things are really helpful for so many people because, in terms of multi-unit dwelling, I think the biggest challenge, I think, many people have is really enforcement of by-laws. Rubbish, noise, pets, all those sort of parking, I think, all those types of behavioural issues I think many owners struggle with. And I think your webinar will go a long way to helping people feel more empowered, in terms of being able to deal with these various challenges.

Amanda Farmer: Yes. Good by-laws are definitely the starting point for, I have to say, 95% of the problems that we experience in strata, and I think that's why these webinars are so popular and I have so much fun delivering them and answering everybody's questions live as well. So the registration is over at yourstrataproperty.com.au/webinar, and I will pop that link in the show notes also.

Lovely to chat with you again this week, Reena.

Reena Van Aalst: You too, Amanda, have a good week.

Amanda Farmer: I will, and I'll catch you next time, everybody.

Reena Van Aalst: Bye.

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