



Member call no. 42: Helping "troublemaker" Rita turn her WA community around
Publication Date: 18 June 2021

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Amanda Farmer: So do you... Are you minded to approach The State Administrative Tribunal for orders that you are given access? Do you want to go down that path, because that path is available to you?

Rita: Yes. So if I go for that, I know that I have to ask one of the other first, to get the access of the record. But what she is trying to play within the legislation of a postponing it until she can.

Amanda Farmer: Yes. Okay. You have a time period. At least you did under your old law. And I assume it's the same in the new law. A time period within which the strata company has to give you access.

Rita: Yes.

Amanda Farmer: I'm just pulling up this. This in 107 or 109?

Rita: Yes. And that time period has already passed.

Amanda Farmer: Yes.

Rita: And he's still playing with that, saying even in the AGM recently, the AGM, she has discussed that in front of everybody saying that, *"Oh, she hasn't given us the list, what she wants. So unless, and until I get that list, I will provide her the access."*

Amanda Farmer: Okay, well that's just wrong. You do not have to provide a list of what you want. She does have to make available for your inspection, all records and documents in the custody and control of the strata company.

Rita: Correct.

Amanda Farmer: And they have to specify a date for inspection, that's not later than 10 days after they've received the application. At least that was what I'm looking at here in your old law. And the reason I keep looking at the old law, is because I have a case for you from your Western Australian Court of Appeal. And we will put... We've got a copy of this case inside the membership. It was actually provided to us by the member who was involved in this case.

It involves Strata Plan 55728. And this sets out precisely the relevant law, and the reason why documents must be made available, according to that law. This person involved in this case has had to pursue her request through The State Administrative Tribunal.

And then all the way up to the highest court in Western Australia, The Court of Appeal. Of course, nobody wants to go there on their own dime, that's for sure. But what I'm wondering is, if you brought this case to the attention of your strata manager and or your strata council and said, *"Look, this is where we're heading guys. And we have the highest court in our state saying that I'm entitled to access these records. This is the relevant legislation. I do not need to specify what I want. You must provide access to all records within your custody or control. You're already late. The time period in which you have to do this has already passed. And if I don't have access within 7 days, 14 days, whatever time period you want to put on them, I will be commencing this process. And it starts with an application to The State Administrative Tribunal for an order that you have access."*

Rita: Okay. Okay. That would be good, because the intention is very clear from them, saying that they don't want to share the information.

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Amanda Farmer: Yes.

Rita: Even they chose the auditor, because recently the members do realise that. And because of maybe putting the voice out, saying that this is what it is happening financially.

Amanda Farmer: Yes.

Rita: They said that, *"Oh, we don't want the members to act like auditors."* Well, if you do, but so we are okay to work with the auditors. And they propose the 3 quotations, and the council has accepted one of them. And that auditor's accessing while asking the list of the financial records because they are only doing the financial, not the compliance audit.

Amanda Farmer: Yes.

Rita: Because there in 10 years, there's not a single council meeting. So, when we asked for the minutes of the council meetings, they say, *"There is no meeting, there is no minutes."* Then how the decision is made. Say via email.

Amanda Farmer: Yes. This is a very common complaint. The same thing happens in New South Wales. I haven't checked, but I assume your WA legislation is probably the same, and as the source of this problem, the same as in New South Wales. There is no legislative requirement, it's not in our law, that our strata committees, our strata councils must make decisions in a meeting. I think quite the opposite in WA. They can actually make quite a lot of decisions outside of meeting, even outside of general meetings. So, my thoughts on this, and again, I'm not a practising WA lawyer, so this is certainly not legal advice. They probably correct that they don't have to have meetings and making decisions over email is fine. Say for matters that must be decided in general meeting, and that are specified in your legislation must be decided in general meeting. So that's probably the weaker argument or the weakest of your arguments. And I wouldn't spend too much time focusing on the fact that the council doesn't have meetings or hasn't had meetings.

It is relevant when it comes to transparency and telling other owners, once you've got all of their details on the strata roll. Telling them that this council, well, who knows what this council is doing, what decisions they're making. We have no insight into that, because there's no meeting agendas. There's no meeting minutes, and we don't have the opportunity to have a say. That's the kind of approach that you make to owners when you're advocating for a change and a change in the council. If you are on council, then you would be having regular meetings and there would be transparency for owners.

Rita: Sorry. I am right now in the council. So, the recent AGM, because of all this voicing, they don't want me to speak and spread this news, because I was not in the council. I was talking to the members, owners, and we realise that, that I am just advocating on this. So they allowed me this time in the AGM to become a council, to keep everything within their control, when I'm in the council. And as for the new legislation, that should be the 3 office bearers. Chairperson, treasurer and the secretary. That is legislatively. Well, in the reform is there, but they choose to have just a chairperson who is one of their friends. So, they are still not appointing the treasurer or the secretary, as per the legislation. And because the strata manager in front of me, mentioned to the chairperson. "No, no, no. I don't want Rita to be a treasurer."

Amanda Farmer: Oh, okay. You're a troublemaker.

Rita: I'm a troublemaker. So, and she also put, without any considering, we didn't even discuss in the council and strata manager writing in the minutes, saying that "Please do not... We are resolve that no discussion would be held on the topics, which was happening in the past."

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Amanda Farmer: Okay. Now tell me this. At this meeting where you did end up being elected to the council. Where there are the nominations for council and people were not elected, or just the old council put their hands up, you put your hand up and that was it?

Rita: There was another member who wanted to be. But he was not chosen, because of if some excuse of a... So what happening that when they want to bring some changes, they go out and get the nomination from their friends. And that friend has no idea what's happening. So they stay for a year or 2, and then they don't go further renomination, because it's happening, there's nothing is happening in the council.

Amanda Farmer: Right.

Rita: So they are just bringing their friends saying even to that extent, knocking the door and saying that *"We want to get this lady out of the council, and can you nominate?"*

Amanda Farmer: Yes. Okay. All right. Well, you need to be the one who is putting forward the real story, the facts.

Rita: They want to contain this information to themselves.

Amanda Farmer: Yes. I understand that. You're your first step is gaining access of course, to these records. And I suggest that's where your focus is. I think you're going to get some inspiration from this case that I'm going to send you. You know the law, Rita, you know what you're entitled to. If I can give you anything today, it's confirmation that you're on the right track. You're doing the right thing. And it's just a matter of how much energy you have to continue to push in the face of a council that's not supportive, and owners that are disengaged. I think it's definitely worth continuing to push to get your hands on the strata roll so that you have contact details for owners. And then you must be very strategic in the way that you approach those owners and explain the issues to them.

Amanda Farmer: You don't want to overwhelm them. You don't want to burden them. You don't want to complain to them. What you want to say is, these are the facts of what has been happening in our community. This is why this is a detriment to you and your investment. This is devaluing your investment. Whether you live here or not, it's an investment and probably your largest investment. And this is how we fix it. And we fix it by getting in place a proper qualified strata manager who complies with the law, and council members who are engaged and interested, able to comply with their duties, and transparent. That's your first approach to owners. And if you get silence in response to that, crickets, as I call it.

Then you know you're going to have a hard road ahead of you, because you don't have the support of the community.

Rita: Yes. So in that case, Tribunal can't do anything, is it?

Amanda Farmer: Okay. So, the Tribunal, in respect of records, absolutely. I think you know the path to the tribunal in respect of getting an order for access to the records, you might have to pursue that. Where you have a dysfunctional, what we'd call in New South Wales, a dysfunctional community. So we have noncompliance with legal obligations. We have failures to repair and maintain the common property. We have favouritism, favouring one owner's interest over another. We have breaches of Tribunal orders. These are all examples of dysfunctional communities, and they are grounds for the appointment of a compulsory strata manager, also known as an administrator with all powers of the strata corporation. The same concept exists in Western Australia. Are you aware of the ability to have an administrator appointed to manage your scheme?

Rita: Not aware of that part.



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Amanda Farmer: Okay. So I want you to have a look at Section 205 in your new legislation.

That is the section that talks about the power of the Tribunal to appoint an administrator. And I am going to send you a couple of cases. I've just done a little bit of digging and tried to find 2 reasonably relevant cases when it comes to the appointment of administrators in WA. We will put the links to both of these under this video for those who are watching this later. But in the meantime, Richelle will email you the links. They are cases from your State Administrative Tribunal. The first one is the owners of 43 Kinsella Street, Joondanna Strata Plan 14493, a 2014 Tribunal case. And the second one is Hockey and Anor, the owners of Mount Bakewell Resort Strata Plan 18228 2013 tribunal case. And I'm hopeful that when you read those cases, they're fairly easy to read.

You'll understand the kind of situations in which your Tribunal will appoint an administrator who takes on all functions, all powers of the strata company, makes all decisions. You essentially hand the building over to this person in the understanding that they will do the right thing. And it is an order that's only made in exceptional circumstances where things are really bad, and these cases and the facts of them should give you an idea. You know your building better than I do.

Rita: Yes.

Amanda Farmer: Give you an idea of whether your building falls into this category, and whether you think it might be worth approaching the Tribunal for that kind of an order.

Rita: Okay. So if not, that was scenario, as you are saying. So there is no middle part of asking for the audits, which can make them straight like to follow certain rules and the legislation?

Amanda Farmer: Yes. For sure, you definitely can do that. And that's usually the recommended next approach. You're asking, we've talked about the need to ask for orders of the Tribunal for access to records. So yes, that's number one. And you might call that your first application or your first request. Then you need to be very clear about what is the strata company doing or not doing that is in breach of the legislation. What other things are happening here that is in breach of the legislation. We've talked about the failure to convene council meetings, but I'm not convinced that that is a direct breach of the legislation.

Rita: Okay.

Amanda Farmer: It's probably a sign of the dysfunction, and the poor performance of the council and the strata company generally. But I'm not sure you will be able to directly point to a breach of the Strata Titles Act. Do you say you can point to other breaches of the Strata Titles Act?

Rita: By-law breaches.

Amanda Farmer: So these are by-law breaches by owners?

Rita: Yes. By even the council members. So the working management is using the exclusive use of a common property.

Amanda Farmer: Okay.

Rita: That is a by-law breach, they suppose to not blocking the fire exit or way out. And all the corridors are used like a storage for their laundry cages and all that.



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Amanda Farmer: Yes.

Rita: They are having the cleaning and caretaking contracts without any formal contracts, which they are not willing to sign any contracts.

Amanda Farmer: Yes.

Rita: Because once they sign the contract, if they are breaching the contract, they are responsible.

Amanda Farmer: Yes.

Rita: So they chose not to have any formal contract, even for recording the financial, they are just saying this is a cleaning expense, rather than saying cleaning and caretaker. Because if caretaker takes a lot into the consideration for the breaching. And then even the cleaning part, they are not doing for the benefit of the owners, they are doing for the benefit of their guest. So, they are not regularly doing it even during the COVID time.

Amanda Farmer: Yes.

Rita: And when we raise the issue, mainly they are not even taking into consideration any complaint or that, I don't know whether they are keeping the complaint register, because they are just asking us to go away. When we go and complain, the strata manager is coming back to us saying that, *"How can you know that the cleaning are not done? Are you 24/7 looking that cleaners are coming or not?"* We said, *"Sorry, due to COVID, we are just confined to our home. And we know that there is no cleaning that is happening."*

Amanda Farmer: Yes.

Rita: And so, instead of him going and asking the supplier to do the cleaning correctly, the strata manager is blaming us that we are accusing the supplier.

Amanda Farmer: Okay. So there's a few things there. First of all, what you say is a breach of an exclusive use by-law. So there is a by-law in place about the exclusive use of common property, and the person or the entity with the benefit of that by-law is not complying with its terms. Is that right?

Rita: So they are using it without any... So they're having a vending machine without paying any rent. They are using exclusively the corridors, and they are just using it as if it's their own.

Amanda Farmer: So there's the exclusive use of common property is happening, but there is no by-law in place.

Rita: No, no.

Amanda Farmer: Okay. And the council is aware of this, and the council is allowing this to happen.

Rita: Because the council is themselves.

Amanda Farmer: Yes. It's council themselves. Sure. Okay. Good. Well, that's a good example of what I call dysfunction. And this is an example of allowing a breach of the law to take place, and not taking any steps to prevent that breach or correct that breach.



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Have you, and I think you have, because I remember this in your notes, put forward a motion at a general meeting that something be done about this particular situation?

Rita: Yes. And so when I did that, they just disregarded in the AGM, because they are having the majority. And they say, "We are good the way it is happening. There is no need of a formal agreement. There is no need of a fixing the processes regarding the financials." They are using breaches as it is agreed in the previous AGM, which it's not.

Amanda Farmer: So what they're essentially doing is they're breaking the law. You're then telling them in writing, you've broken the law. This is what you're doing that is wrong. Please stop doing it, or correct it. And they've said, "No, we're not going to stop. We're not going to correct it, even though we know it's a breach of the law."

Rita: Yes.

Amanda Farmer: Okay. If that's all reflected and recorded in documents, whether those are letters from you to the manager or the council, or meeting minutes, motions before meetings and meeting minutes, then that's excellent. Because that is the type of evidence that you will need to convince the Tribunal that an administrator should be appointed. You've tried, and you getting blocked at every attempt.

If you can show that, and you can show the tribunal that you've only come to the tribunal as a last resort, because there's no acknowledgement here by the strata company. That they're acting illegally, there's no commitment to correct their errors. Then you have no choice, but to seek the intervention of the tribunal, and the tribunal can force them by making an order, to do what it is they need to do to comply with the legislation, or the Tribunal can appoint an administrator to do it for them.

Rita: Okay. I understand. Yes. So it is like a last resort?

Amanda Farmer: Absolutely.

Rita: I have to present the case in that line.

Amanda Farmer: That's right. Yes. And the evidence in your case is the documents showing the history of these complaints. And you have, I know, been communicating at least since 2018. I've seen in what you've sent me, the same complaints essentially, and trying to get them resolved, and it's just not working. So all of that is going to be very relevant to the Tribunal and an important to give the Tribunal that chronology of events and explain the history and all of the attempts that you've made, to try and get this strata company to comply with its legal obligations.

Rita: Okay. So I understand.