

Publication Date: 27 July 2021

## YSP Podcast Transcript: Episode 272. Does an “in meeting” vote trump a “pre meeting” vote?

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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.

**Amanda Farmer:** Hello and welcome. I'm Amanda Farmer and I have with me today, Reena Van Aalst from Strata Central. Hey there, Reena.

**Reena Van Aalst:** Hi Amanda. How are you?

**Amanda Farmer:** I'm doing well. I'm working my way through a rather busy period in strata. I heard from a fellow lawyer very recently that lockdowns are our busiest periods. Things tend to go a little bit nutty when our strata residents are in lockdown, as we are in Greater Sydney and surrounds at the time of recording this. No doubt you're experiencing that craziness too, Reena.

**Reena Van Aalst:** Oh, definitely, Amanda. I think also when people are at home, everything that's been on their mind, they can see comes to the forefront and therefore everything becomes an issue rather than when they're out and about or they're at work. And they don't really notice certain things. Well, they aren't as aggravated by them, so to speak.

**Amanda Farmer:** Yes, definitely. But we can do our bit to try and help reduce that aggravation. I'm sure you have many challenges at the moment, Reena, but I'm going to ask you first to pick one and share it with me and we'll see what we can do about it. What's your challenge this week?

**Reena Van Aalst:** Well, this week, Amanda, we had a meeting recently where we had a pre-meeting electronic voting occurring, so that the voting had obviously stopped 24 hours before the meeting. And then we ended up having a Zoom meeting as well to consider the motions that were predominantly by-law changes and amendments. And an owner that was present pre-electronically, who had already submitted a vote, was then present in person or through the screen via Zoom, and the vote that he had cast in the pre-meeting electronic voting was in favour of a particular motion.

But then when there was discussion at the meeting, he then voted against the motion. Now, on the numbers, it didn't make any difference in this particular case. But my question, Amanda, is can someone do that or do we have to accept the initial vote? Because this is a bit strange. I think most people would not really normally turn up and vote electronically, which is number 1, that's an anomaly, I think. Perhaps, that hadn't been thought of at the time when the legislation was drafted, but how does it work? I mean, this person didn't make a difference, but what if it did make a difference? Do you say that previous vote has to count or the new vote has to count? How does it really work?

**Amanda Farmer:** Yes. Interesting that you say it's unusual for somebody to vote by pre-meeting electronic voting and then turn up to the meeting. I have had this question many times, so maybe it's not so unusual that people are either not understanding that when they have cast a pre-meeting vote, they don't have to go to the meeting and vote again, or indeed they do want to change their mind, and they've taken a different view once they've thought about a particular issue and they want to turn up at the meeting and vote a different way. And my answer to this question when I've been asked in the past is that it is legal, possible, valid for an owner to go to a meeting and vote differently to how they may have voted in a pre-meeting electronic vote. Of course, these are meetings in New South Wales. We can have meetings that are wholly conducted by pre-meeting electronic voting.

So then know that you don't have a chance then to vote again, but we are seeing, and you can let me know, Reena, how common this is for your buildings. Buildings that have a mix of pre-meeting electronic voting. You can't attend. You're not sending a proxy you can vote prior to, but then other owners who want to attend be part of the discussion can do that in the meetings either face-to-face or on Zoom. There is nothing, in my view, that prevents somebody legally from turning up to the meeting and voting again, or changing their vote. And the chair of the meeting should be taking that most recent vote as the vote.

**Reena Van Aalst:** Yes. Well, that's what we assumed that may was the case, like a proxy form.

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**Reena Van Aalst:** Which, if it had been received, then it's changed, you take the most recent one. So we did that. So thank you for that. Yes, I just think sometimes it... Some meetings aren't really held by both types of mediums. Usually a pre-meeting electronic meeting, usually on the whole, on the majority of cases are just done that way without having then a subsequent physical meeting or an electronic meeting where applicable. So most people only had electronic meeting voting and that's it. You have the 24 hours before the cutoff and then it's wholly done that way. There's no additional meeting held to allow people to actually be present, to voice their concerns or raise any questions or make any amendments in any way.

**Amanda Farmer:** As far as I'm aware, there's nothing that addresses this kind of situation directly in our legislation. I'm sure you looked it up as well, Reena. If I do find something, I will pop it in the notes, but it may be that if we're seeing owners take this avenue of pre-meeting electronic vote and then turn off a vote again, later, we might need something to clarify the position in a future amendment to our legislation. It's definitely a question that I've had a few times before.

**Reena Van Aalst:** Well, that's good, Amanda. I thought I was the only one.

**Amanda Farmer:** It's out there, it's happening.

**Reena Van Aalst:** I shouldn't have thought that. That's silly of me to think that.

**Amanda Farmer:** My challenge for this week, this is a very, very important subject for us to be talking about. It comes from the recent tragedy that we have seen in the United States, the collapse of the Surfside building in Miami. And at the time that we are recording this, approximately 100 people have been pronounced dead from that collapse.

**Amanda Farmer:** And the search, for some weeks, has been ongoing. I want to bring this to the podcast because the subject that I'm talking about, you may have guessed is repair and maintenance of our common property. And incredibly important subject, always, more so now, when we have seen what we're seeing in the media, what we're hearing, is that this collapse has been due to a failure to act, a failure to address some serious structural issues in a building, that were indeed known to the community. Of course, you don't know the facts necessarily, the accuracy of what we are reading in the media, but there is quite a bit coming out now about reports that were done for that building, discussions that were held within the homeowner association, as they call them in the US. And action that was demanded and action that wasn't taken fast enough. And this tragic outcome that has happened overseas.

My view, absolutely this kind of tragedy could happen here in Australia. We're not protected from this. And I do, most days of the week, work with owners in buildings that are trying desperately to get their owners corporations, their committees to pay attention to repair and maintenance, to have particular work done. For fear that there will be, if there isn't already structural damage, worsening of a building's integrity and danger to, not just property, but person down the track. It is probably the most common complaint that I see from strata owners, is that their building is not taking repair and maintenance seriously.

And we do have some important legislation now in place. We have some good advocates now in our space, including our building commissioner, David Chandler, when it comes to our brand new buildings and our buildings that are less than 10 years old. But we're talking here, as we were in Miami, a building that was 40 years old. We have plenty of buildings of that vintage right across our country. And I'm not sure, Reena, that our communities are paying enough attention, and perhaps our legislature is paying enough attention to ensuring that those buildings are properly maintained and that there is swift action that can be taken when a community is not meeting their legal obligations. No doubt like me. This is something that you encounter often, Reena, buildings that you work with, owners that you're dealing with, this need for proper repair and maintenance.

**Reena Van Aalst:** Amanda, I mean, you're right on the mark in terms of this concern where buildings are trying to sometimes reduce the capital works fund in terms of how much money is being raised. And that's the thing, a big area, because just recently we took over a strata scheme and the capital works fund hasn't been updated for more than 10 years. So anyway, so we had to get that done. The problem is that when people look at the legislation in terms of, are they required to raise those funds?

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**Reena Van Aalst:** Well, first of all, you don't even have to engage an expert to do it. So I don't know how a lay person in a building can go around, look at the building and say, "Yes, this piece of equipment, or these windows, or this paint will last X amount of years." I don't know how a lay person would ever have that qualification or expertise.

And then secondly, there was no requirement to actually raise the recommendations that's outlined in the capital works fund year-by-year. And so what we try and do is we, just as strata committee, that we raise those amounts, that we have a closing balance in accordance with what's been recommended. But then the committee may or may not agree, and that's one thing. And then when it goes to a general meeting, the owners may or may not agree. And I think the problem is that when you have so many people that live in a community building, their personal situations in terms of finance vary, and therefore, some people do find it difficult to pay levies. And one of the reasons that they live in an apartment is so that they don't have to have the outgoings of a house and maintain everything at their own cost. So there are to be able to live in an apartment.

There are some economies of scale that are achieved by having the cleaner that takes out the bins, and that's all the common areas and et cetera. But then on the other hand, the commerce supplies was where you have to then replace it and maintain. That's such a true requirement to do these things. And unfortunately, we do see a lot of people get on the committee to make sure that work isn't done or that monies aren't raised. And I even had someone tell me that once that's why he got into the committee, because he thinks that the committee is just spending money willy nilly.

And I'm thinking, Well... So when I questioned him, I said, "What do you mean? Are they spending outside the budget?" "Oh, no. They're not doing that." It's like, well, if budget is passed, the community have to obviously consider quotes within the budget framework, but they are allowed to spend that money. And that is what it's been. Not that you have to spend the whole budget, but I mean, it's giving you a guideline of what we expect that we will need to pay in the upcoming financial year. So yes, I'm very concerned about it. When I saw that I was totally shocked. And I mean, you said young kids being killed and you think to yourself, what's really happened there.

**Amanda Farmer:** Yes. And you've mentioned a few important things there, Reena. The capital works fund planning, which we have right across our country and our different jurisdictions, the requirement to have these 10 year plans. It is in New South Wales at least. But indeed the legislation says that plan is simply to be prepared. It doesn't necessarily have to be prepared by anyone who knows what they're doing. And it is to be implemented as far as practicable, is the wording in our legislation. There is no penalty for not following the plan, for not implementing the plan, though it is a legal requirement and I see buildings that don't have plans or have out of date plans. And then of course we do have the legal obligation, the statutory requirement, it's Section 106 in our Strata Schemes Management Act in New South Wales to repair and maintain the common property.

Our courts tell us that that is an unavoidable, absolute, strict duty. There's no excuse for not doing that work, but in practice, what happens? And I see it from the lawyer perspective is that this duty doesn't get met by some buildings. It is left up to, often a single lot owner to stand up and say, "This is not good enough." We need to do this work in some buildings it is multiple millions of dollars worth of work. So understandably, owners are not prepared for that. Not willing to pay for that. And it takes one brave owner to stand up, point out the legal obligation, the failings of the strata committee, perhaps, or the majority of owners who will not approve work, go to a lawyer, seek advice, put together a tribunal application, go through the rigmarole of tribunal proceedings, incredibly expensive tribunal proceedings, and obtain orders from the tribunal that work be done.

Or that our compulsory manager be appointed to facilitate work that the community just can't get their act together to do. And often these are costs, legal costs that are not recovered by the owner. And very few owners will go all that way. I've worked with a few of them and they're very special people, but it shouldn't be that hard to get a community to meet their legal obligations. So I do think that something is going wrong in our process. I'm not sure exactly what it is. It's probably a few things, but we have seen, we are seeing the fallout that can happen when buildings don't take these obligations seriously.

**Reena Van Aalst:** I think, Amanda, what you've raised are some really good points. In essence, what you're saying is that the owners corporation must repair and maintain common property. It's a statutory obligation. And then on the other hand, you don't have the tools in the Act that will enforce that obligation.

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**Reena Van Aalst:** So on one hand, you've got this obligation that you have to, but then all the other tools that are in there about raising money, spending money, this, that, capital works fund, obligations, they don't marry up to each other. So therefore there's a bit of a mismatch there. And therefore, I think that's where I think our legislation is failing owners because it's saying where you have to do this, but how you do it, it's up to you or you don't really have to do it, or as long as it's closest practicable or in terms of how you implement the capital works plan. And to me, there's no point having a plan if you don't really have to do much with it, except just pay a bit of money.

And again, even the reports, I mean, some of them have been done. There's a bit of obviously a market out there for these reports as they're required, but then the detail isn't there. And therefore really, you've got to pay a few thousand dollars to get someone to really do a proper assessment of the condition of the current plants and equipment and paint work, and all the other bits and pieces in a building. And then make sure that is as clear as possible. I mean, you can't sort of predict everything's lifespan, but you can give a bit of a guideline. But if you're only paying \$600 for a report that someone is using a desktop and just puts a couple of numbers in, and it really, again, you're not getting that accuracy. Now that I think sometimes means that people think, "Well, why should we follow a report, because that membrane should last more than... They've said last 10 years, but it should last 20. We only got it done last year."

But again, the quantity surveyors not giving that information into not going through perhaps all your invoices or your minutes or your quotes and approvals. Then how will they know? I mean, no one can open up a membrane and see when it was last replaced. So there's a lot of data that's required to give it good, accurate reports. But I still think in the main run, the ones that we do have, it's still better than nothing, even though they may not as be as accurate as they need to be.

**Amanda Farmer:** Yes, that is true. And increasing our knowledge that these reports exist. And for purchases to understand that they should be looking for these reports, they should be looking at the quality of the building, the quality of the maintenance that's going on. Is there any maintenance going on? I was reading an article earlier this morning coming out of Miami that said their apartment market has been really shocked by this. And it just hasn't been part of their culture as purchases, and it's an incredibly strong market there as we see in our east coast. Purchases don't take the same steps that we do see purchases take here to investigate, to look at books and records, to have at least some understanding that the building should be well-maintained in Miami. They simply go in and make sure there's some money in their equivalent of the capital works fund. And they secure their apartment.

Now that is set to change over there. And it may be that that is what will ultimately drive some legislative change over there. And I think here, there are lessons to be learned there as well. An owner that wants to achieve a great sale price for their apartment. I think sometimes we see owners try to hide things in the records, perhaps very often we might see committees say, "Don't put that in the minutes because it will devalue our properties if we have on record that we need to replace the roof membrane in 2 years time, and it's going to cost a \$100,000.

Let's try and think of it the other way. Isn't that a good sign for your purchaser coming in that this is a well-maintained building. We have ticked all those boxes. We've got the capital works fund. We're doing proper budgeting, proper planning. There won't be surprises for you, new purchaser, down the track. That's certainly a building that I'd be keen to be buying in. And they're the kinds of things that I should be looking for. So maybe this shift in the way we think about the value of our buildings might assist in changing the way that we manage them.

**Reena Van Aalst:** Yes. It's a very good point. I think also it depends on the mindset of the people too, where people sometimes don't see money spent outside their own particular apartment as adding value to their investment. Whereas if it was spent internally doing a renovation, that's more bang for their buck as opposed to forking out money to fix the roof membrane where they're not the top apartment being affected by any water penetration, for example.

**Amanda Farmer:** Yes. I do think our purchases are getting more savvy. We're spending more and more money on apartments. We have people who've worked hard for that money. They are perhaps at the top of their game, in their work life, they are smart. They are savvy and they are going to be looking more and more, I think, at these aspects of a building.

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**Amanda Farmer:** So if you're in a building, you're managing a building, you're on the committee, you really need to be covering these off too. If we can't convince you on the safety front, then perhaps we can convince you on the investment front.

**Reena Van Aalst:** Exactly. Amanda.

**Amanda Farmer:** Okay. Shifting gears over to your win for this week, Reena.

**Reena Van Aalst:** Yes. So this is a really wonderful win I've had. I've never used that term as a wonderful win, but we had a COVID case in one of our strata schemes, in one of our large buildings. And at that time, the Department of Health had rung the building manager and unfortunately the cleaner who does work for that building wasn't able to do a deep clean. So I was able to reach out to some of my contacts and other cleaning companies, and I had someone come down there within that 4 hours to do a thorough deep clean. And they just walked me through the process of how it's done, because originally I thought that the whole building would have to be deep cleaned, but what they said, "No, you just have to follow the steps of the person from when they parked their car, where they go to the lift, where they then go up into the building."

And it was lucky that this building, and he has the floor only access. So therefore owners can't go to any other floor except for the main common areas in any recreational areas, as well as the car park. That really helped, so we were able to basically get all that done. I think they were there about 4 hours doing deep clean, but it was just one of those things, Amanda, where you just have such peace of mind when you know that it's been done, that you've done as much as you can as a strata manager to ensure the safety of all the residents. And the fact that the cleaner themselves weren't able to do it. And they didn't really try hard to try and find someone else, they left that to us to do, which is not an issue I think within itself.

But it just meant that when you're asking someone who doesn't clean the building to come out and do this, even though it's a specialised thing, and it's obviously very expensive, but at least we knew that it was going to be done properly and it was done, and in the timeframe they told us. And it was a 30 page report of all the areas that they did. And they took so many pictures and showed us where they threw away the stuff. And it was just fantastic. It was just mind blowing, actually. You don't realise when you watch these people on TV and you'll see just a few seconds of someone cleaning, you don't know really what's exactly involved. And it was just, I was just felt so relieved that that afternoon that it had been done.

**Amanda Farmer:** And I imagine those cleaning companies that have the ability to do these deep cleans are going to be the preferred cleaning companies for our strata buildings moving forward, even when on the other side of this.

**Reena Van Aalst:** Exactly. And also too, I think you don't paint the building and then you really go out of your way to try and help. It really makes a big difference, I think, to someone in our position. It just makes us feel that there is someone that we can find if we have that context to be able to get this done. So, yes.

**Amanda Farmer:** Great. And did you have CCTV in that building?

**Reena Van Aalst:** Yes, we do. Yes.

**Amanda Farmer:** So you could track where the person had been.

**Reena Van Aalst:** Yes, definitely. And I mean, I spoke to them and they're really nice people and everything. So, I've got the areas that they've been to and where they'd been in the recreational areas as well. So I have their information from them as well as the CCTV footage that we had as well, if it was needed.

**Amanda Farmer:** And no further cases coming out of that building?

**Reena Van Aalst:** No.

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**Amanda Farmer:** There you go. There's your proof. Yes, nicely done.

**Reena Van Aalst:** Yes.

**Amanda Farmer:** My win for this week that I'm sharing also arises out of our current lockdown situation in Sydney. I'm hearing about more and more buildings using QR codes to check in visitors, trades, delivery people. Now, I want to be clear that at the time we are recording this, having a QR code for entry into a residential strata building is not a legal requirement. It's not mandatory, but I first started talking about this a few weeks ago on one of our Facebook Friday lives. And I heard from quite a few building managers and strata managers that they had managed to secure a QR code for their building through the Services New South Wales website.

As I understand it, there isn't, or there wasn't then a particular category for strata buildings, but creatively, managers were selecting the accommodation option, which was really intended to be for hotels, I think. As long as the owners corporation had an ABN, they were able to get a unique QR code through Services New South Wales, and give residents the comfort that if needed, visitors, trades could be tracked as having attended their premises at a future date. Reena, are you seeing this with your buildings? QR codes being established?

**Reena Van Aalst:** Yes. Definitely. A lot of buildings are having them installed, but I don't really know, Amanda, how effective they are in terms of compliance, because unless you have a concierge at the front desk sitting here watching who's coming in and out, I don't know if people are actually following. Because in one building, one of my committee members said to me that she saw a food delivery person into the building and he didn't even want to use it when she said, "Oh, you have to use a QR code." And he said, "No." He just wanted to deliver the food and go. So, I mean, obviously, if you've got cameras that helps, but not everyone's using them. So that's the thing, just making people comply is probably the other side of that coin.

**Amanda Farmer:** Yes. And also I am hearing sadly about some people being forced to use them and perhaps not having a smartphone and not being given access to the building because they don't have a smartphone, and they can't check in with the QR code. Two points there, QR codes are not mandatory for residential strata buildings at the time I'm saying this. And also, if you do have a QR code, you should have another means of checking people in if they don't have a smartphone that can necessarily use the QR code. So to your point, Reena, that's only really going to work if you've got a concierge or building manager there at the front saying, "Here's a book for you to sign if you can't use the QR code."

So we certainly shouldn't be turning people away from their homes or carers away from visiting vulnerable people if they're not checking in with the QR code. But if it's something that sounds like it might work in your building, give your residents some comfort. And I would assume that some compliance is probably better than not having the option at all. It could trace a positive case back to your building down the track, and that would be helpful. It's something to look into. I will certainly put the link to the relevant Services New South Wales page in the show notes for this episode.

**Reena Van Aalst:** And I think, Amanda, people are seeing that everyone's tech savvy and everyone speaks and understands English. Now, if you have a carer that doesn't read or write English and they don't know how to use the QR code. I mean, to me, they might even have a smart phone, but they haven't registered in the Services New South Wales. So therefore they can't scan it, but that doesn't go anywhere. So therefore I think there's a lot of people that could be people that aren't able for some reason as well. So there's another area of people that really can't use those codes. But I totally agree with you that it's better to have them than not have them. Some compliance is better than no compliance at all. And at least if we can trace a case, it's going to be helpful for everybody in that building.

**Amanda Farmer:** Yes. I think especially if you've got facilities like swimming pools and gyms as well, and you have those open, you've decided to keep those open, which you're entitled to do in New South Wales at the moment. Having a QR codes there is a good idea so that you do have a record of when a resident even, has gone to that facility, if they've checked in. And we're all getting used to it, we're all used to the check-in. Now it's almost second nature to get to a door and to scan that code. So I think it will be like that for a little while to come.

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**Reena Van Aalst:** Until we become complacent again, then we don't do it.

**Amanda Farmer:** It's amazing how we learn and then unlearn these behaviours. Then relearn, that's it. Well, thank you very much for spending time with me here today, Reena. I will send you out to continue being safe, being a distant, if you can, and I will be catching you next time.

**Reena Van Aalst:** See you next time, Amanda. Bye.

**Outro:** Thank you for listening to Your Strata Property, the podcast which consistently delivers to property owners, reliable and accurate information about their strata property. You can access all the information below this episode via the show notes at [www.yourstrataproperty.com.au](http://www.yourstrataproperty.com.au). You can also ask questions in the comments section, which Amanda will answer in her upcoming episodes. How can Amanda help you today?