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YSP Podcast Transcript: Episode 286. Strata Committees: 3 Popular Questions Answered

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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 your podcast host, Amanda Farmer, and today I am hoping to demystify strata committees. I'm going to offer the answers to 3 popular questions that I am often asked about strata committees. And there has been a flurry of conversation over in members-only Q&A forum recently about strata committees and these 3 questions in particular keep cropping up. So I thought I'd bring them to the podcast and do my best to address them in a high-level way. And we definitely get into a lot more detail inside the members' forum. The three popular questions are:

Number one, do strata committees have to hold meetings?

Number two, what are conflicts of interest all about, how are they disclosed, and what do we need to do about them?

And number three, does a strata committee member vacate their position on the committee when they sell their lot?

Now I will be referring to legislation specific to New South Wales in our Strata Schemes Management Act 2015. I know there are plenty more questions out there about strata committees, but these are the three popular questions that have been in front of mind for me and other owners that I'm working with at the moment. But please do continue to bring me your strata committee questions. Post a comment in the comment section under this podcast episode over on the website. Let me know your burning question about strata committees so I can continue to provide relevant information for you and your communities.

Diving into question one, do strata committees have to hold meetings?

Now there is nothing in our New south Wales legislation that mandates strata committee meetings, unlike general meetings. We do have a section in our Act that says an owners corporation must hold an annual general meeting. There is no similar section for strata committee meetings, perhaps surprisingly to some and indeed frustratingly for others. I do think it would be helpful if our legislation said that strata committees must meet at least a certain number of times each year, or must make certain decisions in meeting. This is such a common question and a big source of conflict in my experience. I often hear about dysfunctional strata committees that never hold meetings, make decisions behind closed doors. Owners don't know what's going on in their community because their strata committee does not hold formal meetings.

Dysfunctional strata committees are such a problem, in my experience, that I actually wrote an ebook on the subject titled: The Number One Thing that Dramatically Improves Apartment Living. Spoiler alert, the number one thing is a properly functioning strata committee. I will pop a link to that free ebook in the show notes for this episode so you can go and check it out if you haven't already.

Now, despite the fact that our New South Wales legislation does not have a specific provision mandating strata committee meetings, it certainly says a lot about how those meetings should run. And in my view, this tells us that our legislature intended that strata committees should make decisions in formally convened committee meeting. There is a very detailed regime set out in schedule two to our Strata Schemes Management Act, all about strata committee meetings, how they are convened, notice periods, what constitutes a quorum for a strata committee meeting. I spoke about this back in Episode number 149 with Reena Van Aalst. We talked about why strata committees should be meeting regularly, and covered off some best practice guidelines for strata committee decision-making.

When explaining to owners why I believe it was always intended that strata committees make decisions in formally convened committee meetings, I often point to Clause 9 in Schedule 2 to our Strata Schemes Management Act. This is the clause that sets out that owners have the opportunity to oppose a decision that is proposed to be made by their strata committee. They do that by giving notice to the secretary before the decision is made, letting the secretary know that they oppose the making of the decision

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and their notice must be supported by owners with more than one third of the total unit entitlement. So it is possible for owners who are not on the strata committee to tell their committee, they oppose a decision that is going to be made by the committee. This of course assumes that the owners know that an issue is coming up for decision. How would they know that? They would see it in the notice of committee meeting.

Three days notice is needed for strata committee meetings. And if you are in a building with 100 lots or less, that notice goes on the notice board. If you're in a building with more than 100 lots, that notice must be sent to each owner. So indeed the intention is there for owners to be aware of strata committee meetings, to be aware of decisions that are going to be made, and to have the opportunity to oppose that decision being made. If meetings are not happening, and I know that is the case in many buildings, owners are denied that opportunity to have their say.

The second question that I have been turning my mind to recently is on the subject of conflicts of interest. Now when our 2015 legislation commenced in New South Wales, we had a new requirement for strata committee members to disclose conflicts of interest, not previously enshrined in our legislation. It is in Clause 18 in Schedule 2, which paraphrasing requires a strata committee member to make a disclosure when they have a direct or indirect pecuniary interest in a matter being considered at a strata committee meeting. And that pecuniary interest appears to raise a conflict with the proper performance of the committee members' duties.

A pecuniary interest, I described to owners as a financial interest. And it's important to be aware that both of these requirements must be met to trigger a duty to disclose. That is to say, number one, the committee member must have a direct or indirect financial interest in the matter that is being considered at a committee meeting. And number two, that financial interest must appear... Doesn't have to, but must appear to raise a conflict with the proper performance of the committee member's duties.

Now, my recollection is that this disclosure regime in the act was designed to deal with conflicts when it came to owners corporations contracting with companies in which committee members who may be developer representatives may have financial interests. But as we have put this legislation into practice over the last five years or so, owners are getting more and more savvy about this requirement to disclose pecuniary interests that appear to raise a conflict of interest and are wanting to understand more deeply what kinds of situations this may apply to.

Now, I suggest that a standard form motion should be on the agenda of every strata committee meeting. I think it's a good idea to make it motion number one, requiring that any committee member with a direct or indirect pecuniary interest in any matter about to be considered at the strata committee meeting disclose that interest if the interest appears to raise a conflict with the performance of their duties. It can be a standing agenda item just as we have agenda items to approve the minutes of the last meeting. It just reminds committee members to scan through the agenda and see if there may be anything on that agenda in which they have a financial interest. For example, there may be a renovation application for their particular lot. That renovation is going to improve their lot. I'd say that gives them a financial interest. In the outcome of that motion, it may raise a conflict with the proper performance of their duties and a diligent committee member, I suggest would excuse themselves from making a decision on that particular item.

There may be a motion dealing with a difficult tenant that is leasing from one of the committee members. Maybe there's a by-law breach notice to be sent. The committee member could possibly have an indirect pecuniary interest in that matter being considered. Their tenant might pack up and leave because of that breach notice, because of pending tribunal proceedings against them. I think that's another situation where a committee member, acting in good faith, would disclose potential conflict.

So the lesson here is that the question about whether a disclosure needs to be made must always be considered in the context of the particular motion that is on the agenda. A conflict at one meeting may not necessarily mean a conflict at another meeting with a different agenda. And that's why I do recommend that all committee members turn their minds to the question of whether they may have an interest, and therefore, a conflict at the start of every committee meeting in light of the upcoming motions.

Now, what happens if a committee member identifies that they may have a financial interest and therefore a conflict in considering

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a particular matter that is on the agenda? Well, Clause 18, in Schedule 2 to our Act, tells us that it is the responsibility of the committee member to disclose their potential conflict. And once they've done that, it is up to the remaining committee members to determine whether that member who has made the disclosure should be present during any deliberation of the strata committee with respect to that particular matter, and whether the member with conflict should take part in any decision of the strata committee on that particular issue. So the disclosure may be made and the remaining committee members say that they are happy for that member to continue to be part of the decision-making. It is up to the remaining members of the strata committee to make that call.

Clause 18, in Schedule 2, also tells us that the particulars of any disclosure made under this clause must be recorded by the strata committee in a book kept for the purpose. And that book must be open at all reasonable hours for inspection. Now, I find this a strange requirement, particularly because it refers to a book, not any other record. And I have to say, I have yet to come across one of these books. I search owners corporations books and records regularly, and I haven't yet within the last five years of this legislation being in effect come across a book kept solely for the purpose of recording the particulars of a disclosure made under Clause 18 in schedule two to our act. If anyone out there is keeping one of these books, let me know. I'd love to congratulate you for complying with the letter of the law. It's definitely there, Sub-clause 3, in Clause 18 of Schedule 2.

Strangely, perhaps this duty to disclose conflicts of interest and the ability to be excluded from decision-making doesn't apply in general meetings. There is no need for an owner who may have a financial interest in the outcome of a motion at a general meeting to disclose that interest, perhaps that's not so strange. Strata committee members have been elected to serve their owners corporations, to act in good faith and with due diligence, and to make decisions in the best interests of all owners. Not the case with owners attending and voting at general meetings. I'm sometimes asked if it's okay for an owner to vote in favor of their own motion at a general meeting, for example, a motion to approve their by-law for their renovation works. And I say, yes, that's fine. There is no restriction on owners with interests in the outcome of a particular motion, voting on that motion.

Closing point on this second popular question about strata committees. If a disclosure is not made, and it should have been, it's worth noting that there is a penalty. This is one of the few penalty provisions in our legislation. A committee member who doesn't disclose a financial interest that appears to raise a conflict with the proper performance of their duties is exposed to a penalty. That's 10 penalty units under our New South Wales law.

Moving on to the third popular question that I've been answering about strata committees, does a committee member automatically vacate their position on the committee when they sell their lot? When they are no longer an owner in the building?

In New South Wales, we look at Section 35 of our Act, which sets out the circumstances in which an elected member of a strata committee vacates their office. There are six specified circumstances in section 35. A committee member vacates their office if they cease to be eligible to be a committee member. I'll come back to that. They vacate office if they were not an owner at the time they were elected and the person who nominated them ceases to be an owner. They vacate office if they resign and they've given notice in writing of their resignation. They vacate office at the end of the next meeting at which a new strata committee is elected by the owners corporation. If a special resolution is passed, determining that their office as member is vacated, then they're out. Or if they die, they cease to be a member of the strata committee.

You'll notice missing from that list is if the member was an owner at the time of their election and they sell their lot, it seems there is no requirement for them to vacate their position.

I mentioned I would come back to the first circumstance, which was that if they were eligible to be a member at the time they were elected, and then they cease to be eligible. If we use here, the example of an owner who's self-nominated for election to the committee at the AGM, then the circumstance that made them eligible is that they were an owner. Owners can self-nominate for election to the committee. That's in section 31. So if they self-nominated to the committee and they then cease to be an owner, that in my view, pursuant to section 35, they have ceased to be eligible for election. And therefore they vacate their office. But if they were an owner at the time of their election and they did not self-nominate, somebody else nominated them. Then they do not vacate their position. None of these circumstances in Section 35, in my view, apply to that situation. And perhaps that was an oversight in the drafting of Section 35. I'm not sure. It does seem strange that an owner who has sold and has been a committee

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member does not automatically vacate their position on the committee.

Indeed, as you've heard, a committee member may of course submit their written resignation. That might be encouraged or invited of an owner who has sold, but the key question to be asking here is, if an outgoing owner, committee member does not simply resign, we need to know how this person came to be on the committee in the first place. Are they an owner who's self-nominated at the AGM or were they nominated by someone else?

Also, be aware in this context of Section 45, which refers to with the vacation of committee positions by office holders, that is the chairperson, secretary or treasurer, if an office holder position is vacated, then Section 45 tells us that the strata committee is to appoint a person who is a member of the strata committee or who is to be a member of the strata committee to fill that vacancy. That sounds to me like a mandatory requirement to fill a vacancy in an office holder position. There is no mandatory requirement to fill a vacancy on a committee where the vacancy is not one of an office holder. Section 35, Subsection 2 tells us that the strata committee may... Not must, not is to, may appoint a person to fill a vacancy on the strata committee.

I do know that some strata committees are keen to fill vacancies because it assists them to achieve their quorum at each committee meeting. Another question for another day, but the quorum provision for strata committees can be a tricky one whereby it refers to the number of members elected at the AGM and not necessarily the number of members currently on the strata committee. And this discussion about vacancies, filling vacancies, not filling vacancies, should tell you that the number elected at the AGM may be quite different to the number currently on the committee, causing some difficulties in smaller committees when they are trying to achieve a quorum for a meeting.

So those are three popular questions I am being asked at the moment about strata committees. I've covered whether strata committees have to hold meetings. What's the deal with conflicts of interest and disclosure. And what happens when a strata committee member sells their property?

I hope that's been helpful. I do always love to hear from you your feedback, your comments, your questions. You can do that over at yourstrataproperty.com.au/podcasts. You'll see this episode, number 286 in the list, with the opportunity for you to post your comments below the episode. That's also the place to access any of the legislation that I've mentioned, my free ebook: The Number One Thing that Dramatically Improves Apartment Living, and also the transcript for this episode. A bit of technical detail in there, definitely worth getting your hands on the transcript this week. Thank you for tuning in. That's all from me. Catch you next time.

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 by the show notes at 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?