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YSP Podcast Transcript: Episode 292. Quorums for pre-meeting electronic voting | washing on balconies | a salute to our strata managers

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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 good. We are recording this chat in, what is the last week of the professional year, let's say that for most of us, I hope. I know a lot of my friends and colleagues are shutting up shop this coming Friday and looking forward to a break. So, I hope you are too, Reena.

Reena Van Aalst: Yes. Well, our office is closing next week, Amanda, on Thursday.

Amanda Farmer: Is that Christmas Eve?

Reena Van Aalst: No, 23rd.

Amanda Farmer: Oh my. [crosstalk 00:00:53] Down to the wire.

Reena Van Aalst: Yes, what is fine I think for us, it's better for us to do that and then come back a little bit later because a lot of things have to be done. We've got meetings even in our last week, so unfortunately we've got to get some minutes out before the break. So, yes.

Amanda Farmer: And I know many strata managers have just been back to back with meetings this month, fitting them all in now that people can get together again in person, a lot of AGMs were delayed during lockdown. And I think your first question, your challenge for me today, Reena relates to meetings. Jump on in, what's the challenge?

Reena Van Aalst: Yes, well, we had a meeting that we'd issued by pre-meeting electronic voting. So there was no physical meeting. There was no Zoom added on at the end. Some buildings have that as well. So this building, we decided it was for two owners that was submitting a by-law, and one was for waterproofing and one was for some renovations. And what happened after the agenda was issued? The committee had some concerns with the by-law, even though the by-law had been provided to them 3 months before that, before the agenda had been issued. And unfortunately, people didn't read it until they got the agenda, and they were having a far more thorough perusal of the documents. Anyway, so we normally sent out a reminder notice to all owners that, just in case you haven't voted, please do so.

So the meeting occurred, we looked at the voting results and only 4 owners voted out of, I think it was 160 lots, but not even a quorum was achieved, even for those that were financial and eligible to vote. And so, my question to you Amanda, and this is probably one, the first time that I've actually had this, a quorum was not achieved. And therefore, in quorums with Schedule 1 Clause 17 of the Act, if there is no quorum after 30 minutes, the chairperson can then declare that a quorum is achieved and then proceed on that basis. But what happens for a meeting where it's held solely by pre electronic voting?

Amanda Farmer: So solely by pre-meeting electronic voting, there is no voting at the meeting, but there is still a date and a time for the meeting. And that's really important. Some people make the mistake of thinking everything's by pre-meeting voting. There's no actual meeting. So there's no date and time. This is in my mind precisely the reason why it's important to be aware that we are still convening a meeting. It is still being held, but all the voting has been done prior to the meeting start time. And that does need to be 24 hours prior, according to our New South Wales legislation.

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So yes, interesting situation it does say in Clause 17, as you've pointed out, Schedule 1 to the Strata Schemes Management Act, that where voting has been done other than in person. So it is pre-meeting voting. Whether you're having a meeting with partial pre-meeting voting or solely pre-meeting voting, if that person has voted, they are taken to be present at the meeting for the purpose of determining a quorum. And that's in Subclause 3, of Clause 17, in Schedule 1.

Reena you are saying in your situation, even taking into account that everyone who voted was counted towards the quorum, you still didn't have a quorum, which is 25% of the unit entitlement present and voting, or one quarter of the lots present and voting.

Reena Van Aalst: Correct.

Amanda Farmer: On my reading of Clause 17, there's no reason why the chairperson, at a meeting being conducted solely by pre-meeting voting, can't wait 30 minutes and then continue with the meeting. There is no mandatory requirement to adjourn the meeting and allow for additional votes to come in. The chairperson can wait the required 30 minutes and then proceed with the meeting. And of course everybody's already voted, on the motions that are on the agenda by pre-meeting voting. So all the chairperson is doing is declaring the result of each motion and then closing the meeting.

Reena Van Aalst: Thanks Amanda. That is just one of those things where there's a legislation aspect to the question. There's also the political part.

Amanda Farmer: Indeed.

Reena Van Aalst: And it's funny because I don't know if it's because the owners don't have email, or they don't think to use it or...

Amanda Farmer: Yes.

Reena Van Aalst: Yes, I don't know.

Amanda Farmer: I do know that these meetings wholly by a pre-meeting electronic voting are far easier to overlook as an owner than a meeting where you got a date in your diary to turn up somewhere, whether it is online or in person. So I suspect that's what's happened in that situation.

Just to clarify, our chairs do have the option to either adjourn in the absence of a quorum, and you hold the adjourned meeting sometime in the near future or to proceed with the meeting and determine the motions. And that process came in with our 2015 Act, and when asked what the best option is, should a chair adjourn, should a chair continue? I usually encourage my clients and managers who ask me this question to consider what's on the agenda. Is this something particularly controversial? Is this something that as many owners as possible really should have a say in? Is it close to Christmas? Is it a meeting solely by pre-meeting voting, where the paperwork could well have been overlooked? And maybe that is a situation where the chair is best placed to adjourn rather than to proceed with only the minimum amount of votes.

Reena Van Aalst: Yes. I think Amanda, based on this there is the AGMs coming up in March, but I might just ask the chairperson perhaps to adjourn it to a physical meeting where amendments can be made to the actual motions. And that would mean that, that owner could perhaps amend her by-law at a physical meeting. So that might be the way to go.

Amanda Farmer: Yes, certainly the process is not easy for us, is it? When having to deal with electronic meetings, complex by-laws amendments...

Reena Van Aalst: Also, the other matter, just to raise a matter on that before we finish on this topic, is that the cost. So some owners, in a sense having a meeting this way, is more cost-effective. There's no physical meaning, there's no time. But then the

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disadvantages is that when there's discussion to be had, it can't be had, if it's not straightforward. But straightforward things, it was fine. And again, the strata committee had considered both applications 3 months before the agenda was issued. So, like it wasn't as if people hadn't seen it, and therefore it was just a shock. But unfortunately, as I said, people sometimes don't have time to read things properly. Want to be helpful in a meeting, let's put, "yes, that's fine submit on a general meeting agenda and go from there". So...

Amanda Farmer: I hear you.

Reena Van Aalst: Yes. I'll keep you posted Amanda.

Amanda Farmer: Please do. My challenge for this week relates to the external appearance of a lot. And what in my mind I want to say is a rather old-fashioned perhaps, old-fashioned complaint, old-fashioned problem. And that's "washing on the balcony".

Washing on the balcony, that's something that strata residents, committees, strata managers have been dealing with it seems since time immemorial. And it's, I have to say, not something I find comes up all that often anymore. Reena you might tell me your experience, perhaps it's just as not being litigated. But I have a case at the moment where an owner has been issued with a notice to comply, because of washing that is visible from outside the building. And there's a few by-laws cited in the various actually notices to comply. And the building is proceeding to seek a penalty from the Tribunal.

And I'm raising this today because I've also been reading a few articles recently from colleagues on LinkedIn, a topic that comes up regularly this time of year Christmas decorations. Can building outlaw, pass a by-law, prohibiting residents from putting up Christmas decorations because it impacts the external appearance of the building. There may be some grinchers out there who may not support Christmas decorations or enjoy Christmas decorations. I thought I'd just bring it here for a toss around. Reena, is your experience similar to mine that washing is an old problem? Or do you still see it?

Reena Van Aalst: Yes. It actually, it sort of is like it comes in waves Amanda, or I think it just depends on the person's propensity to report it. Like whether the committee is actually doing like a by-law blitz in terms of doing an inspection of say garages, balconies. So I think we do find it still happens, and it usually is the same people that we are dealing with. And unfortunately, I think it's one of those things where you can try and ask them to remove it. It gets removed, and then after, it comes back again. But it hasn't been as prevalent as it used to be, I must say. I don't know if it's to do with the fact the new apartments have inbuilt dryers that are actually installed when people buy them. And ye, it's probably part of the reason why, but it definitely does happen.

And in terms of decorations, I haven't had any people sort of windge about decorations per se, but I've had previously in a scheme that I used to manage at Bondi Junction many, many years ago. When there's, I think Hanukkah, this it's called [sukkah 00:11:49]. It's like an enclosure that you can put around a balcony, which I think is, is on for religious purposes. And I know that some people were complaining about the external appearance of that particular structure, which was on there I think I'm not sure how many weeks it's got to be out there or how many days, but... And it was actually people of the same faith that were complaining about it. So it wasn't naive, because I think they thought it was so unsightly and ugly, so...

But apart from that, I haven't really had any complaints about decorations per se.

Amanda Farmer: Yes. And that's the thing about let's call it seasonal decorations or changes to external appearance. They come, and they go, and that does make it difficult if a building does, for whatever reason, have a problem with it to take enforcement action. Because as we all know if you are starting with mediation perhaps, or you're issuing that notice to comply and then ultimately wanting to proceed to the Tribunal for an order or for a penalty we're talking months and months. So it is probably next Christmas or the holidays come back around again, by the time you are before the Tribunal.

But washing, I to think that perhaps we're all a little more conscious these days of the impact on our climate. And we are maybe

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more forgiving of those who want to reduce their carbon footprint, and reduce their use of electrical appliances and their dryer inside their apartment. So they're putting their washing on their balcony, and we may be becoming more accepting. I don't know.

Reena Van Aalst: I think Amanda, people can actually, I mean I agree with the whole climate concept of trying to minimise electricity consumption and people to be more green, but I think you can actually put the line inside your apartment. Don't put on the balcony, but just put it in the balcony area, just inside your apartment. That to me would achieve both things. It means you don't use your dryer, you're getting the air flow. And also, I don't think people, especially like in other parts of your street perhaps, or across the road or other parts of the building that can look down, I don't think people should have to look down on other people's washing. To me, it's just, it's unsightly. And there are many ways that you can still achieve the same outcome of being climate conscious, but also being mindful of the appearance of the building as a whole. Because if it's only one person, it may be acceptable in terms of their look. But if everyone was doing it, it would look like a dog's breakfast.

Amanda Farmer: Yes. I agree with you that certain buildings, depending on the layout and how the balconies are placed, if numerous people were hanging their washing on the balcony, it does impact the architectural integrity, let's say, of the building. And I do like that tip. It's certainly something that I have done in my own apartment. Lucky to be up high and get a lovely breeze through our apartment and just having a portable line inside the door, if you're not using that space during the day, because you're out at work, or you are sitting in your office recording podcasts, hanging the washing there just inside the balcony still is very effective.

So I will let you know how that one plays out. I'm actually acting for the owners who have received this notice to comply. And they are actually in a situation where it is not a balcony. It is more like a partially enclosed terrace. And they actually do feel that they are hanging their washing inside their apartment. And it is a matter of whether it is indeed visible and whether that impacts external appearance. So I won't say more at this stage as that dispute is live, but I may bring you an update in the near future.

Reena Van Aalst: I look forward to hearing about it, Amanda. It's an interesting digression there about the enclosure that you're referring to.

Amanda Farmer: Yes. I shall say no more. For now. Now let's move on to your win for this week, Reena.

Reena Van Aalst: Yes, well, I think I was trying to reflect on the whole year, Amanda. Just before we did our podcast this morning, and I'm thinking it's been quite a difficult year, I think for many people. And I think just being able to get to the end of it, with all the challenges we've had with COVID predominantly affecting a lot of our owners and residents, whether in a personal way, in terms of their livelihood, rental income, the building increased cleaning, increased costs for owners in terms of having to maintain shared facilities. And even as late as last week, I had a COVID case in one of our strata schemes. And now the whole regime of being advised by the health department doesn't happen anymore. It was only through the resident advising us themselves through the building manager. We can't say who it is.

We don't know if it's the new variant. And I just think that it's been such a tough year. I think for lots of people now. With our meetings being held by Zoom, even though there's been many advantages to holding meetings by Zoom. I think having larger meetings, I've had a few AGMs last week, and we had some contentious issues, and we held them by Zoom, and I was having to use the poll function, which is a good tool. But then when you have special resolutions, you've got to then look at everyone's unit entitlement. It's not just a matter of saying, okay, the majority have voted for it. Some people don't know how to use Zoom properly, some people don't like using it. I've had many owners saying to me, "I don't feel comfortable using Zoom for an AGM. I want it to be held in person".

Trying to, I think, get basis for bookings at this time of the year for meetings has been a bit of a challenge. I mean, hotels have been fine on the most part for medium-sized schemes, but for larger schemes to have lots of people and not knowing who's going to turn up. We even have a meeting on Monday, where the owners have said to me that they want me to include on the agenda,

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that you have to be double vaccinated to actually come to the meeting. And so I know all that is now being removed by the government in terms of having to wear masks in shopping centres, no more QR codes, people that aren't vaccinated have the same rights than anybody else in terms of going places and doing things.

And so again, I'm thinking like, all these things, all the challenges that we've had this year, just coming to the end of the year now with just few more meetings to go, I just think there's a huge accomplishment. And for many strata managers, I think we were, obviously in our Women in Strata Christmas party we held, we were talking to our colleagues in men, and I'm sure you recall, many people were saying how people are very anxious. People are very angry. They're very demanding. People are on a sort of heightened. They want everything now. Yes. And I think after the whole year at this, I think the reopening of the economy has been great and being able to go out and have meetings in person. But I think also the legacy of the whole year and having people sort of having all the stresses of having to work from home, perhaps with children, it's just really, I think, manifesting itself now at the end of the year, I think in terms of people's expectations.

Amanda Farmer: Yes, just surviving 2021 is a win for our managers and those serving our strata sector. Definitely something that I've heard a lot this year. That's always been bubbling away in the background, but has not, I think, come to the fore, as it has this year, is the communications that our strata managers receive from owners. Some of which border on, if not, can be classified as bullying, and particularly the last couple of months. And it might be what you are talking too there Reena, managers just taking stock and saying, "God, I've been through a lot this year". That word bullying has been coming up in a few conversations that I've been having. And I think there are some big discussions to be had next year, amongst strata managers, professional associations, to address that and see how we are going to protect our strata managers from the type of burnout that they experienced this year, which whilst related to the pandemic was not directly because of the pandemic.

And let's say it's everything that comes out of being locked down, residents being at home more than ever before. And all of the problems that arise from that. And you really are the unrecognised, I think, unrecognised warriors there in our community. We recognise, I hope our doctors, our nurses, our frontline medical workers, our retailers, our small business owners, strata managers in my mind are right up there with those who have just had to battle through this year under incredible pressure. So hats off to you, congratulations for coming to almost the end of the year. And I do hope that you're taking some time out. All of you who are listening in are taking some time out through January. I hope I agree with Reena that's often when it's quieter in our year and that you're looking after yourself, your physical health, your mental health, spending time doing things that make you happy. You need it.

Reena Van Aalst: Thanks, Amanda. I think I'm in a sense when you mentioned doctors and I know that we're not frontline workers in the traditional sense in terms of what people perceive that to be, whether you're working in retail and serving people or cleaners, but in a sense, we are sort of like the virtual frontline workers, because we are actually doing all the things to keep the buildings going, keep services being provided to deal with different types of issues. And one for example was renovations where people had plans to renovate. And of course, because of the restrictions they had to be postponed, then there were too many of them happening at once. And then the noise issues of people working at home with jack hammering happening. And whereas only they'd been in the office.

So when I think about all the challenges that we've had, I think it is like in a sense a big win for us to come to the end of the year and still sort of be functioning as we are as managing agents. I think that is definitely, I want to reach out to all my colleagues out there and just say we're all on the same boat and we all have done the best that we can under very difficult circumstances.

Amanda Farmer: Yes. Good on you. And here's to 2022.

Reena Van Aalst: Yes.

Amanda Farmer: I'm very conscious that I said that at the end of 2019, "2020, bring it on, I'm excited". Not so much.

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Reena Van Aalst: Yes, exactly.

Amanda Farmer: Well, I will wrap up with my win for this week. This win comes from a happy client who has successfully had a tree reinstated in the common property. Now I'll give you a little bit of background. This tree was removed as part of some major work that was going on around the front common property garden of the building. And there was an understanding on the part of my client that a similar tree would be replaced. Quite a large leafy tree that gave their lot, in particular, some significant privacy and shade for their own plantings. And as it turned out, over time, the works were completed. My clients waited for the tree, a new tree to arrive, to replace the previous, and it never happened. And they communicated with their strata committee asking about the tree. And eventually, it became clear that the committee did not plan to reinstate the tree.

My clients approached me for some advice, and I looked at the written communications that had passed when the work was being discussed, the minutes of meetings. And I pointed out that if the owners corporation was not replacing reinstating common property, like for like then this significant change to the front garden actually required a special resolution under our New South Wales law, the owners corporation didn't have that special resolution. The case did proceed to mediation, no resolution there, but importantly, while this process was continuing under the strata law, let's say, my clients had notified the local council that this tree had been removed A without the approval of the local council, and B a similar tree had not been reinstated. And ultimately, what occurred is that the local council got involved in the case, issued an order. I believe ultimately issued a fine because the order wasn't complied with at first by the owners corporation. And just last week, I was sent a photo with a "thank you", showing me the nice new tree that is in place and will grow to reinstate the privacy and the shade that my clients previously experienced.

Reena Van Aalst: Was the tree at a high that required council approval for it to be removed?

Amanda Farmer: Yes.

Reena Van Aalst: So, which is why council then... Yes. Because normally you can't remove trees over, I think two metres without council permission.

Amanda Farmer: Yes. It might have been two metres, it might have been a little bit more. It was quite a large tree, and all credit to my clients for pursuing that avenue, looking up council's requirements and reporting the issue to council and even getting the local members' support, I believe, to progress the complaint. Essentially it was through council, and a good, responsive council investigating the issue and then issuing required orders.

I do teach on my webinars when I talk about by-laws that notifying your local council, depending on what the problem is, what the breach is in the building, can often be very helpful because if development consent is needed for a particular renovation that's been done in breach of the by-laws or a structure has been installed or indeed a tree removed, then council has controls around that kind of development, that kind of activity. And it can be much more straightforward for council to simply issue an order than it is for you as an owner to proceed down the lengthy, costly Tribunal path. And we definitely saw that in this particular case.

Reena Van Aalst: Yes, I know Amanda. In all those of applications for tree removal, one of the conditions of consent when that removal is granted is that a tree be replanted. And that's usually the case, obviously, to maintain greenery and the whole feeling of the actual development in terms of its aesthetic appeal. And you said privacy concerns, et cetera. So that's a great outcome, Amanda. I think going down the out of council was definitely the more cost-effective and the quickest, because by the time, like you said, it takes such a long time to go through the Tribunal process. At least now your clients have had the great outcome of having the tree planted now rather than another few months. Cause these, obviously, it takes time to grow. So the longer it's not there, the longer it's going to take to get their privacy reinstated.

Amanda Farmer: Yes, indeed. And similar to strata managers, it's not often that strata lawyers hear good news stories or have clients who are happy enough to thank you well after the event, and send you an update of their improved, much improved

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circumstances. So that's always appreciated and a nice way to end the year.

Reena Van Aalst: Yes. It's lovely. Amanda.

Amanda Farmer: So Reena Van Aalst, wrap up your last few meetings, enjoy the end of year celebrations with your team, which I know you have planned, and rest, recuperate, rejuvenate, and I'll see you in 2022, hey?

Reena Van Aalst: Sounds good, Amanda. Looking forward to it.

Amanda Farmer: We'll see everybody next year. One more episode next week before Christmas from me, and then we'll catch you in 2022. Thanks Reena.

Reena Van Aalst: Thanks, Amanda. Happy Christmas everybody.

Amanda Farmer: 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. You can also ask questions in the comment section, which Amanda will answer in her upcoming episodes. How can Amanda help you today?