

Publication Date: 30 March 2022
YSP Podcast Transcript: Episode 306. Maximum Agency Agreement Terms |
Bankrupt Committee Members | New Webinar

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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. Hi, Reena.

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

Amanda Farmer: I'm good. I know we were just talking off-air about the crazy week that you're having. I didn't get a chance to tell you I, too, am having one of those weeks, but let's take a break. Let's step outside of our busy workday for just a moment and share our wins and our challenges. Kick off with the hard stuff. What's been challenging you this week, Reena?

Reena Van Aalst: Well this week, Amanda, I've received a query from one of our owners in another strata plan. We managed once for him, but he wants us to manage another one for him. And he said to me that he's got this manager that's got an agreement that is one year but it automatically renewed with 90 days' notice. And I said to him, part of the query was, "*When does your current agency agreement expire?*" And he said to me, "*I don't really know because it keeps renewing.*" And I said, "*Well, that can't really be the case. That provision was extinguished in the recent legislation that was enforced back in November '16.*" So he actually sent me the agency agreement, so that I could have a look at what the term was. And it did say in that term period, there was an SCA agreement that 1-year and renewing automatically with 90 days' notice.

Amanda Farmer: So a strata manager with a 12-month rolling agreement?

Reena Van Aalst: With 90 days' notice. Now, I don't know if that just means that... It's very hard to tell. It says one year renewing automatically with 90 days' notice, so I don't know if it's one year period that then renew with 3 month notice period or it just keeps renewing on a monthly basis with 3 months' notice. It's just really unclear and I obviously didn't think that was right and I thought I would just raise it with you today on our podcast to see if you're having any clients come to you with any type of similar queries and agency agreements that have this rollover provision.

Amanda Farmer: Yes. I have heard about some agents attempting to have agreements where there is an automatic rollover. I haven't seen the terms of any particular agency agreement that incorporates that rollover. So I'm interested to hear about that term being incorporated into the contract. The place that I start when I'm explaining to clients the maximum terms for strata managing agents, how they're appointed, and when their term expires, I look at Section 50 in the Strata Schemes Management Act 2015 which, as you've said, Reena, came into effect in November 2016.

And that section says that the term of appointment of a strata managing agent expires at the end of 12 months, if the strata managing agent is appointed at the first annual general meeting of the owners corporation, so that's for our new buildings, and otherwise, at the end of the period of 3 years following the appointment. So this is where we get this concept of maximum 3-year terms from. It is in Section 50 of our Strata Schemes Management Act. So I'm not sure if there may have been a further clause or some more fine print there in that agency agreement that made clear the maximum 3-year term.

What I'm wondering, Reena, is whether this agent intended for the agreement to run for a maximum 3 years and perhaps has not carefully drafted that to make it clear, that is a maximum 3 years, that can, however, be terminated on notice at each anniversary, if you like. Is it that the agent gives notice to terminate or that the owners corporation gives notice to terminate?

Reena Van Aalst: Well, it just says those words, "*Renewing automatic with 90 days notice.*" So I think from that, I would assume that the notice has to come from the owners corporation, but I mean, you know what? You've now given me another thing to think about because it could mean that they give notice of another term. I don't know. It's very confusing and I think, obviously, the Act says that you have to give the owners corporation 90 days' notice before the expiry anyway.

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So basically normally what we do is we give our committees the 90 days' notice to say that our agency agreement is expiring on this particular day and depending on when their AGM is going to be, although we extend it up to the AGM or 90 days, whichever is sooner, so. And I know that doesn't happen with many strata schemes, so I'm not sure. Again, this is quite confusing. And I think also if they wanted to get out, it was probably going to be an issue because as you said, no matter who gives the notice, the renewal date, I suppose, could be assumed to be the commencement date and then 1 year after that. Yes, it's just very confusing and I just thought, perhaps maybe you may have come across such wording in your experience.

Amanda Farmer: I haven't seen that on the front page of an agency agreement. I have been asked a question about rolling contracts and I have always said that you must appoint your agent for a certain term, a known term, that cannot be more than 3 years. So I'm concerned to hear that there is such a confusing contract out there and there may be more floating around and there's a lesson there, I think, for committees, for owners, when they're appointing their manager at their general meeting, which is the place that the appointment of a strata manager needs to happen, to make sure that they've had a look at and read the agency agreement.

It is supposed to be drafted in terms that are easily understood. And especially that front page where it should be very clear when the agreement expires and if it says something like it's a 12-month agreement continuing on 90 days notice, that there is then a clause further on in the agreement that explains exactly what the heck that means. Who gives the notice and what is the maximum term?

Reena Van Aalst: Thanks, Amanda. I'll actually ask them to have a look at that and see if there is a term somewhere else in the agreement that may contain some more information about what that really means?

Amanda Farmer: Let us know how you go.

Reena Van Aalst: Yes.

Amanda Farmer: My challenge for this week is a matter drawn to my attention by a listener and it relates to a committee member who is actually a bankrupt and the person who drew it to my attention, as I understand, is an owner. They're not on the committee, but they're aware that a fellow owner advocated quite aggressively for their committee position and has been elected to the committee and then set about making decisions, putting into action certain things around the community. And things were done that caused this particular listener to look a little bit more closely at the personal, let's say, circumstances of this new committee member.

Did some research and found that this person was a bankrupt and contacted me and said, "*Amanda, I'm quite shocked that somebody who is a bankrupt and has also been a director of companies that have, let's say, run into trouble with ASIC is allowed, entitled, able, eligible, to be elected to a strata committee. Shouldn't there be a rule about this? Shouldn't there be some fitness for the role, perhaps?*"

I'm not sure if you've come across this personal investigation of others background and circumstances when running for election to the committee, Reena?

Reena Van Aalst: No, I haven't actually. This is the first time I think someone's done... Actually, I've got someone that said to me today that they've done a check on someone who's a proxy bearer for somebody else who's quite a troublemaker in a building, but not actually the personal circumstances of someone being bankrupt as such, no.

But I have had situations, Amanda, where committee meetings have been held and people who are on the committee have been unfinancial at meetings and have been allowed to vote. That I've come across, where if you look at the age balances at the day of the meeting, that person wasn't financial, or a number of people weren't financial, yet, if you look at the minutes, there was no reference to that and they all had full voting rights. And I think in the cases of those particular meetings, had they been known to be unfinancial or had that been expressed to those present at the meeting, then perhaps things may not have turned out the way they

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had in terms of resolutions being passed.

But no, that's the first time, but I suppose it's not a crime to be a bankrupt, I suppose, on a committee.

Amanda Farmer: Yes, well that was indeed how I guided this listener who was making this inquiry. But I was interested to know whether there are owners out there who feel like there should be a minimum standard required of strata committee members, whether lawyers, other professionals perhaps, that have to pass a character test or to show that they are a fit and proper person to be accepted into a profession, for example. Should we have that amongst our strata committee members? I'm not sure I have the answer to that. I think it's hard enough to get committee members to volunteer for that position and to give up their time for their community.

I think everybody has a past and maybe decisions that have been made and unfortunate circumstances that may have befallen them. We may not know the reasons why someone has had to declare bankruptcy. It may have nothing to do with them personally, or certainly their character or their ability to serve their community. So I think there's a fine line to walk there. I appreciate the listener who was frustrated with the behaviour that had been going on in the community and was able to link that to some past corporate difficulties of this committee member. I understand how you may see a situation through a certain lens, but I'm not sure that means that we need to impose those standards from a legal perspective on our committee members. My thoughts on the fly.

Reena Van Aalst: Yes, well, I think Amanda, I agree with you in terms of the fact that when people are volunteering, it's very hard to sort of impose conditions when they're doing it in their own time. They're not getting paid. That's number one. I think number two, I think the reason that your listener probably did investigate was because of obviously some issues that were happening and that prompted her to do an investigation. So perhaps there could be a link between a person's behavior on the committee and perhaps their past indiscretions. Or as you said, it could be of no fault of their own. We can't always think to separate events without having all the facts. There's always two sides to every story.

But I do believe, for example, I had this happen yesterday. We had an agent ring because she's got a tenant and the tenant wants to bring an animal as part of the tenancy and we've emailed the committee and there's 5 on the committee and only had responses from 2 members and so we really can't say that the majority and we like to work in terms of the majority. Or in some buildings, we only deal with say the office bearers, who then may confer with the other members, or in some cases they don't confer with anyone at all. But anyway, that's a separate issue.

But the fact is when people are... And I've said to our team members that it's very hard to say to people when you only emailed them last Friday, *"Why haven't you answered them email? Because this agent said I'm going to lose a tenant if I don't get an answer about the animal."* But when you've got people who volunteer, Amanda, it's really hard to impose conditions on the membership. Obviously you want people to respond as promptly as they can and based on urgency of what the matter is, but you can't say, *"Because you haven't done this or you should have known that, then therefore you're not really fit to be a strata committee member."*

But the other thing also is we all know you don't have to be an owner to be a committee member. You can just be nominated by an owner who's not standing for election, so even the fact that you have no financial interest doesn't preclude you from being on a strata committee. So there's another sort of spanner in the works there. So yes, interesting exercise and I think perhaps as perhaps schemes get larger and more complex, there may be some criteria that might be imposed in the future in terms of eligibility and people serving.

Amanda Farmer: And I wonder if maybe that's where the line is? There's a big difference between running a 20 or \$30,000 budget in a small building that doesn't have a lot going on and running a multimillion dollar budget in our more complex buildings and having to make or being able or being authorised to make decisions that can have huge financial impact.

Reena Van Aalst: Exactly.

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Amanda Farmer: Let's just add another layer of [crosstalk 00:12:06].

Reena Van Aalst: Why not?

Amanda Farmer: Interesting to consider. Over to your win for this week, Reena.

Reena Van Aalst: Yes, so last week I had an AGM, Amanda, and there was an owner that had submitted a motion regarding she wanted to enclose her balcony and the strata committee was quite unhappy with the by-law and the explanatory motion. And basically, they said to me when I'd sent a draft of the agenda, *"No, we want you to change the actual explanatory note."* Which is required for motions when submitted by owners. And I said to them, *"I can't change the explanatory note. It's actually her explanatory note. But I'm happy to ask her if she wants me to do that, or if she'll take into consideration any of your suggestions."*

And of course, the owner was adamant that she did not want that because obviously there was another side to her argument as to why she wanted the explanatory note to remain as it was. And anyway, so there was a bit of sort of, I would say, misunderstanding by certain committee members that it was really my role to make her accept what they wanted. And I said, *"No, but that's not my role."* I said, *"My role is to advise you all what the Act says and what each person's rights are."* And I said, *"You have a right at the AGM as does any other owner to say you're not satisfied with the by-law, what's being proposed, explanatory note."* I said, *"There's a democratic way of dealing with it in terms of the voting system, which is where your voice can be heard."*

Because the committee has no real authority. It can suggest things to owners who are submitting by-laws, but it can't actually make them change anything. Anyway, so then we had the AGM and then obviously there were many owners brought up. It was actually unanimously voted down. There was not one person apart from the component that actually supported the motion. But the other owners brought up some other things that had the committee hadn't thought about in terms of why this proposed enclosure wasn't going to be suitable for the building.

And at the end of the day, I said, *"See?"* I said, *"You just let things take their course and you can see that you've got a better outcome than the committee trying to sort of force its own position."* Which ended up being the position of all owners, anyway. So sometimes it's just how you come across and what you try and do, but trying to make an owner change an explanatory note because you weren't happy with what it said, I think owners have to understand that any owner has a right to put up anything. It's up to the owners at the general meeting to then decide accordingly as to how they want to vote.

Amanda Farmer: And all's well that ends well. But understanding that process of democratic decision making, let's say, is important and I, too, see committees forget that and feel that if there is something happening that they may be anxious about a proposed renovation that they feel is not going to be in the best interest of the community, trying to take those steps to intervene earlier than they otherwise should in the process. I definitely see that happen. And good that they had you there reminding them that we need to let this play out. We need to let this play out and have all owners have their say.

Reena Van Aalst: Exactly.

Amanda Farmer: Great win.

Reena Van Aalst: Thanks, Amanda. Yes, it was.

Amanda Farmer: What I wanted to share this week in happy news is that I will be running one of my by-laws webinars next Thursday, the 7th of April. I run these webinars from time to time. Many of our listeners would have tuned in previously. Always something new to learn on our by-laws webinars. I share how to harness the power of by-laws to combat bad behaviour and restore peace to our apartment communities. This webinar brought to you by Lane Cove and Hunters Hill councils. We'll be kicking off at midday next Thursday, the 7th of April and running until 1:30 PM, that's Eastern Standard Time.

As always, I'll give you an update on the cases that I'm running throughout Tribunal, testing such provisions in our legislation like

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harsh unconscionable or oppressive by-laws, how we can deal with residents who dump their rubbish, owners who renovate without approval, nuisances like smoking, noise, and as always, time to answer your questions live on the webinar.

So if you'd like to register, it is free to join us, but you do need to be registered to get your unique access link. You can do that over at yourstrataproperty.com.au/webinar. Reena, any interesting by-law news updates, wins, challenges to share that I can add into next week's webinar?

Reena Van Aalst: Yes, well, I actually had one this morning where there's a by-law for animals, which is a very basic one. I think you can have animals, but you need consent and the owners corporation can't withhold consent. Very basic one. It's one from, I think, the Act. One of the older ones. And then the owners at the meeting wanted to add a lot more conditions that they had imposed on another owner. And I said, "Yes, but this owner had already sort of said, 'No, you can't impose extra conditions. That's what the bylaw says.'" And so I said, "Well, that's correct. You need to actually probably amend your pets by-law."

So I think also perhaps maybe a discussion point, Amanda, could be where there are by-laws and the committee tries to add other conditions in excess of what the by-law is and the enforcement thereof of those, so.

Amanda Farmer: Ah, yes. Good one to cover off. Listeners, anyone out there who has a by-law question, a by-law experience to share, where your by-laws are working, where they're not working, what you'd like to learn more about when it comes to by-law making, bylaw enforcement and tapping into to the power that I believe, and I see, by-laws have to improve our communities? Feel free to post a comment under this podcast episode. Let me know what you would like to learn or share and always looking to jazz up our webinars with information that is relevant to you, our listeners.

Yourstrataproperty.com.au/webinar to register for next Thursday's webinar the 7th of April. Thank you so much for chatting with me today, Reena Van Aalst. Busy lady.

Reena Van Aalst: I'll see you next time, Amanda.

Amanda Farmer: Have a great week in strata. Bye bye.

Reena Van Aalst: 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?