

Publication Date: 14 July 2022

YSP Podcast Transcript: Episode 321. Strata managers: you advise, they decide

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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 to this week's podcast episode. I am your host Amanda Farmer, and it has been a big week here at Your Strata Property headquarters. The dust is still settling. We have welcomed many new members into our online community after our Smooth Moves webinar last week. A special hello to those new members tuning in. A short episode for you this week. I'm bringing you part of my Ask Amanda Now session, which I ran live over on our Facebook page last Friday. There's a link to the full session in the show notes for today's episode.

Now, as you'll hear me say, Ask Amanda Now are short, often 10minute, sometimes more, live segments on a Friday afternoon where I can answer one strata question that has been asked earlier in the week. I do try to host live sessions on our Facebook page every Friday afternoon, whether they are the short Ask Amanda Now or our longer form Friday live chats, which tend to run for an hour.

If you haven't yet joined us for one of these, which are a whole lot of fun, the best way to be sure that you don't miss them is to connect with us over on Facebook. Just search for our page, Your Strata Property, or follow the link I have for you in the notes under this podcast episode. When you hit the page on Facebook, you can choose to like it or to follow it so you'll be notified by Facebook whenever I'm going live. If you're not on Facebook, then you're welcome to connect with me over on LinkedIn under my profile, Amanda Farmer. We do simulcast our live streams over there. And we also go out live to YouTube. We're building a strong following over there on our channel, Your Strata Property. All those links are in the show notes for you. I'd love to have you joining in one of our Friday sessions soon.

Now, what you're going to hear right now is my answer to a question asked by Malcolm about the authority of his strata manager to make a particular decision on behalf of his owner's corporation. You'll hear me flesh that one out a little more shortly, but this is a really important question and really important topic of conversation. And that's why I wanted to bring it to you here on the podcast as well. You'll hear me talk about the advise versus decide dichotomy.

Now I didn't coin this phrase, advise versus decide. I learned it from a very important mentor in my life, a lawyer who I worked for for 10 years before starting my own legal practice. His name is Robert Van Aalst. He is the lucky man who is married to Reena Van Aalst. Reena is often my co-host here on the podcast. And indeed I met Reena through Robert.

As a junior lawyer, I worked closely with Robert and he would say to me often, "Amanda, you advise, they decide." By which he meant, "You are the lawyer. You are responsible for giving advice, but you are not responsible for making the decisions. That's up to the client." Yes, you need to give good advice, accurate advice, you do need to make sure that your client is aware of the decisions that are available to them and the likely consequences of those decisions, but you don't make the decision for them. That's up to them. And for professionals giving advice, and I put strata managers in that bracket too as you'll hear me discuss soon, there is great relief I think in understanding that dichotomy. You advise, they decide. Learn it. Know it. Apply it. To reinforce that message, I will take you over now to my Ask Amanda now segment where I give a few examples of the advise versus decide dichotomy in action. Enjoy.

Hello and welcome to Ask Amanda Now. This is our short segment, about 10, maybe 15 minutes, because I often get carried away where I can answer one strata question for you. And we have a cracker of a question today. I'm going to be getting to that very soon. How is everybody feeling today on this chilly, it's chilly where I am, chilly Friday afternoon? If you are coming on in and catching us live as so many of you often do on a Friday afternoon, feel free to drop me a hello here in the comments. It's always good to know who I've got here with me on live. Even if you are catching the replay, give me a hello. Let me know what you're up to this Friday afternoon.

We had a massive night last night with the Smooth Moves webinar, which was delivered live last night, Thursday night, with thanks



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to Waverley Council. I've heard from so many of you, how much you enjoyed that webinar, how much you learned from it and how excited you are about some of the resources that have been offered through the webinar. So I will come back around and remind you if you missed it where you can catch the replay and what we're all excited about, what's on offer this week for our strata owners and our managers as part of our Smooth Moves event.

Now I'm seeing some hellos that come on in, which is awesome. It's good to have you here with me live. Even though it's just a short one this Friday, I like to have you tuning in and know you're there. Sean is here freezing in Sydney. Yes. Well, I'm on the other side of the mountains and it is particularly freezing here at the moment. So I'm with you. I'm rugged up there with you, Sean. Anthony is here saying hi. Great to see you, Anthony. And Ryan is joining in from LinkedIn. Awesome. Good to see you, Ryan. Wonderful. Alrighty.

Now we have a question for Ask Amanda Now. This question is coming from Malcolm. And we'll just bring it up on our screen. Thank you so much, Cristina. Malcolm actually asked this question on our webinar last night. And I thought it was such a good question. There's a lot of juice, a lot of meat in this one. It's one that I see a number of owners get frustrated by in recent times. I don't think it's something that I've talked about too much on the podcast nor on live so it's a good chance to give my summary answer to this one. And if there is more that you'd like to find out about what is essentially the relationship between a strata manager and a strata owner, we can delve a little deeper into that if you let me know that that's something you want to hear more about.

But in summary, and this is a summary from Malcolm's question, we couldn't fit all of it here on the screen, Malcolm has asked, "How do we handle a strata manager who insists that we get legal advice on by-laws before they are adopted?" Now, Malcolm was asking this question in the context of me on last night's webinar, talking about a template by-law that I had prepared in partnership with Waverley Council and encouraging buildings in the Waverley Council local government area to adopt that template and letting them know, giving them the reassurance that it had been drafted by me, qualified practicing strata lawyer, and they were good to go with the adoption of that template.

Malcolm's question in a little bit more detail was how do we convince our strata manager? How do we get it past the strata manager? Because I feel Malcolm was saying that we're going to, as a committee, say we want to adopt this by-law and the strata manager is going to stop us because the strata manager's going to say, "Well, no, you must. You must go and get that reviewed by a strata lawyer. And I'm not putting it on an agenda until that has been done." So that was the situation, the more detailed situation.

I thought it was such a great question because it raises this issue of who decides in the strata context? Who has the authority? Who has the power to make decisions, whether it's about getting legal advice or putting a by-law on an agenda or getting work done? It's not the first time that I have heard from owners from committee members that the strata manager is saying, "No, we can't," or, "You must," or "I won't unless you do A, B, or C." Owners are often frustrated because they feel that they can't get things done that they want to get done because their strata manager is a roadblock and is preventing that action.

So my answer for Malcolm is first of all, it's always a good idea if there is a legal issue, whether it's a by-law, whether it's some litigation, some tribunal proceedings, a letter from an owner that looks like it might be controversial, it's always a good idea to consider whether you need to get specific legal advice or not. And often, strata managers will say that. They will advise you, "This is a legal issue. It's not straightforward. There's two sides to this story. Maybe this will end up in the tribunal. I think it's a good idea that you do go and get a lawyer." Or maybe, "There's two different types of by-laws you could adopt for example. Your community is complex and we have different structures. It's a really good idea that you go and get advice before you adopt a by-law."

But what I want to be very clear about is that while a strata manager and a good strata manager will often give that advice, at the end of the day the strata manager gives the advice and the owners' corporation makes the decision. And I often say the short form of that is the strata manager advises, you decide. They advise, you decide. And that's the path, the fact that the owner's corporation often acting via the strata committee, the path that the owner's corporation makes the decision, that sometimes gets lost in some communities.

In the relationship between strata manager and owner's corporation, sometimes that concept of the strata manager as agent and

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the owner's corporation as the principal, the ones who make the decisions, the ones who give the instructions, sometimes that distinction gets a little bit lost and gets a little bit misunderstood. Sometimes in communities where there's a bit of conflict, I have to say. And of course they are the communities that I'm so often working with. There might be a couple of different factions within the committee or within the community. And the strata manager may be quite adamant that a certain path needs to be taken. But it's important for the strata manager and for the community, the owners' corporation acting through the strata committee, to understand that ultimately the strata manager does not make decisions. The strata manager acts on instructions. And those instructions must come from the strata committee, where the strata committee has the authority to give those instructions or from the owners' corporation if it's something that only the owners' corporation can decide in a general meeting.

I have another example, not the by-law context but another example where I'm working with some owners who have been frustrated by this lack of understanding perhaps about that concept of strata manager advise you, owners' corporation decide. It was in the context of legal advice and it was a situation where, not a current situation, some years ago, where the strata manager had been instructed to go and engage some lawyers on behalf of the owners' corporation to give an opinion on a legal issue that was happening within the community. The committee members were following up the strata manager regularly and saying, "Hey, what's happening with that brief that we gave the lawyers? Have you got their advice? What did they say?" And I've read the emails since from the strata manager where the strata manager was telling the committee, "It's all under control. Yes, I've been communicating with the lawyer. Yes, we're sorting it out. And I'll let you know when the problem is resolved."

And I've read those emails and explained now to the committee that that is, in my view, quite a bizarre way to approach the relationship between owners' corporation, strata manager, and lawyer because that lawyer was indeed the owners' corporation's lawyer, not the strata manager's lawyer. And every communication that was going from the strata manager to the lawyer should have been made available to the committee, should have been accessible by those committee members. And they should have been in the loop all the time about the communications that were going to the lawyer, decisions that were being made in relation to legal issues, because absolutely the strata manager does not have the authority to be making those decisions on behalf of the owners' corporation.

I say that generally speaking. Of course, an owners' corporation could empower their strata manager to do those things and could delegate their authority to do those things. It would have to be a very specific delegation. It's not usually the kind of delegation that you do have under a standard agency agreement. And I'd recommend to strata managers that you're very careful about that. You're very careful not to overstep those boundaries where you are agent, you are advisor, but you are not decision maker. And indeed, if a community says, "We don't want to get advice. We want to adopt this template by-law that we have been given, whether it's from the council or it's from Amanda or it's from the owners' corporation Network. We want to adopt it and we're happy and we're satisfied that it meets our needs. We've heard what you've had to say. Thank you, strata manager, for giving us that recommendation, but we've made a decision that we want to put this by-law on the agenda."

Thank you for joining me for one answer to an excellent strata question. If you missed Malcolm's question, you can watch this video again. And you'll get that towards the opening of the video, Malcolm's question and my answer. And I'll send you out into your chilly weekend. Rug up if you're in one of those chilly places, and I'll look forward to catching you all next time. Bye-bye for now.

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?