

**Publication Date: 21 December 2022**  
**YSP Podcast Transcript: Episode 342. Strata Managers Giving Legal Advice: What Could Possibly Go Wrong?**

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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 this week Reena Van Aalst from Strata Central. Hey, Reena.

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

**Amanda Farmer:** I'm doing really well. It is a few days before Christmas when this episode is going out, so Merry Christmas, happy holidays to everybody, however you celebrate the festive season. Reena, are you doing something special this weekend?

**Reena Van Aalst:** No, we're actually just having Christmas with the family. I'm actually going to a restaurant for Christmas Eve to have a Christmas Eve dinner with some friends. That's something a bit different this year I'm trying out. Eight o'clock Christmas Eve dinner, so yes.

**Amanda Farmer:** Beautiful. I love that. I really love the idea of taking Christmas out of the home, removing the stress of having to cater and deal with the mess. Going to a restaurant is one of my favourite things to do too, so enjoy.

**Reena Van Aalst:** Yes. One of my friends is actually going to be joining us, but on Christmas day, we've got it at my sister's house, so I don't have to worry. I just have to bring food.

**Amanda Farmer:** Bring food, eat food, relax.

**Reena Van Aalst:** Yes.

**Amanda Farmer:** You will have earned it by then, that's for sure. Lots of challenges around this time. Maybe a couple of wins. Let's dive into your challenge for this week, Reena.

**Reena Van Aalst:** Well, this week, Amanda, I'm just wanting to raise an issue regarding insurance. I think many strata managers out there and strata schemes would realise that it's been very hard to obtain renewal terms for schemes where there are issues that have perhaps been there for many, many years, but all of a sudden are adding to the risk profile that the insurers are not willing to accept.

In this case, we manage a development at Paddington which has a Heritage chimney. It was part of the original development, it's been there for over 100 years, I think. Basically, there's been a few issues with the chimney. There's been reports, there's been a bit of grout that's been coming out of it. It's been on the list for the insurers to know about for the last 3 years in terms of renewal, and the declaration that owners corporations must make, usually through their strata managing agent.

But this time, a week before the renewal was due, when the report came in, we were told that basically, they would not provide public liability cover for any incident resulting from the chimney. Again, we didn't have hardly any time to try and shop around, or not that you're going to shop around for insurance as such, but perhaps go to other insurers outside the usual strata sphere, because sometimes there are offshore insurers that are perhaps more willing to take on risks that local insurers aren't.

Although in this case, we did go to an alternative broker to seek some advice, because they have contact again outside of Australia. They said that because our reports weren't recent, they were unable to help us. This is just really adding to the stress I think of insurance for schemes, apart from the cost that's now been rising exponentially, as many schemes would know. Having one or two claims, or having a risk profile for some insurers, like just being near the water, is now really making insurance renewal a very hard and arduous item. The highest item on any owners corporation's financials, the highest cost is the insurance premium.

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**Amanda Farmer:** Yes, it is definitely what I'm hearing from clients, from committees, and just last week on the podcast, I was chatting to Robin Johnson of Hutch Underwriting. They have brought a new product to the insurance market that maybe is helping out with some of those pain points. If you haven't managed to catch Episode Number 341, do go and have a listen to that one. Reena, this Heritage chimney, it is quite a famous chimney, I might say, on Sydney's eastern suburbs landscape. I know the one that it is. Has something changed with the chimney? Is it becoming more dilapidated? It's just a change of position from the insurer?

**Reena Van Aalst:** Yes, that's what it is. We've actually put some chains around it and put some signage, but the point is, the diameter of the chimney if it did fall, it would go beyond the owners corporation's boundaries. It would actually go into adjoining neighbourhood properties. Yes, nothing had changed. This is why I think why the owners corporation and the committee were quite surprised, was had there been any changes in terms of the state of the chimney, and had there been a new report that we'd submitted as part of the declaration that said this is now worsening anyway.

What the owners corporation obviously is doing now to its writer committee is expediting this whole process of remediation, and looking at what needs to be done. Now, obviously dealing with Heritage is a whole added paperwork and statutory provisions that affect the building work, apart from your regular council provisions and owners corporations. We're looking at a lot of money to actually do the work based on a very preliminary scope.

The issue is this is the danger that it puts the owners corporation in. If someone is injured and there's no public liability cover, we're talking about potentially millions of dollars that the owners corporation would have to raise if there was an incident.

**Amanda Farmer:** Is that something that you can continue to look for?

**Reena Van Aalst:** Well, we're trying to expedite the reports and the scope so ...

**Amanda Farmer:** That will help. Yes.

**Reena Van Aalst:** Also, we've engaged in heritage experts as well as your normal engineering experts and builders. We have a preliminary quote at the moment, which is quite high, but obviously, we need to make sure that we're dealing with the council and making sure that that's expedited. Sometimes, certain councils can be quite slow. Not all councils are slow.

**Amanda Farmer:** Yes, it's a tough one. It just goes to show for our communities that are in control of their repair and maintenance tasks, obligations, that they say on top of them as best they can. You don't want to be in a situation where your insurance renewal comes up, and not just skyrocketing premiums, but can't get quotes for certain coverage at all. That's not a position anyone wants to be in. Yes, you are not the first one to tell me, Reena, that that's what's happening out there.

Let us know how you go with that one. If you do have a success story with being able to get that coverage, do let us know so we can share that one here on the podcast.

**Reena Van Aalst:** Yes, definitely, Amanda.

**Amanda Farmer:** Moving on to my challenge for this week, I have had some communications this week with a strata manager on behalf of a lot owner client of mine. I was communicating with the strata manager because they are, in this situation, the representative of the owners corporation. The communication was about some water that was coming into my client's apartment. They're not living there at the moment, but they're aware from their tenant that there's some water coming in through the balcony doors.

My clients are aware that the owners corporation plans to do some rectification work on the balcony to stop that water coming in. In the meantime, my client's carpet is getting wet. It has been damaged over quite a long period of time because of this water ingress, and the tenant has been reporting this damage. My client has asked me to request from the owners corporation that the owners

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corporation pays for the carpet to be replaced.

Certainly, in New South Wales, we do have legislation that says where an owner suffers some kind of loss because of the owners corporation's failure to repair and maintain the common property, then the owners corporation may be held responsible for meeting that loss. I am bringing this situation to the podcast as a challenge, because when I wrote to the owners corporation, care of the strata manager, and I set out the claim for the cost of replacement carpet.

I articulated the relevant legislation, and I even stated some cases, some Supreme Court cases, that make very clear that the owners corporation's duty is a strict and unavoidable one. I encouraged the owners corporation to get some legal advice on the point so that if someone else had a different legal view to me, then they could express that. Within about 12 hours of sending that email, I got an email back from the strata manager, saying in short that the strata manager disagreed with my view.

The owners corporation was not responsible for meeting my client's consequential losses arising from this water ingress. The owners corporation would not be paying for a replacement carpet. Now, I sent that email off to my client and I said, "Wow, okay, that was quick." I'm not sure that the strata manager took up my recommendation to A, seek instructions from the committee, and B, seek some legal advice on the point. I am wanting to raise this here not to embarrass the particular strata manager.

I don't know whether this person listens to the podcast or not, but to share with other strata managers who I know do listen to the podcast, to explain, I suppose, the risks of responding to communications from lawyers, A: without getting instructions, and B: without recommending to your committees that they should probably get some legal advice on the point, even if you think as a strata manager that you know what the law is. Reena, are you as surprised by this as I was?

**Reena Van Aalst:** I'm not really that surprised because I have come across many strata managers that actually don't realise that the new act that came into effect at the end of November 16 actually has a section, I think in 106, where it actually gives owners, I think up to two years to lodge a claim for any personal and out-of-pocket expenses they suffer as a result of any failure to repair and maintain common property.

That's number one, Amanda, that in a sense, I think a lot of managers don't know this and they should know this, this is I think part of the problem with when someone teaches you when you join a company or you don't really have proper training within your own company. Secondly, there are also managers that act as if they're the owners corporation. I'm not sure, some schemes actually give the manager full delegation, which and perhaps in that vein, the manager has sort of responded to your email, but irrespective of all these issues that I'm raising, to me to say that you don't agree when you're not even a lawyer, I'm not saying that lawyers are always right. We know that's not the case.

**Amanda Farmer:** No, exactly.

**Reena Van Aalst:** All I'm saying is that if you don't know, then why don't you find out the act, do some research? I've been involved in many cases where we've had to pay out owners. I think there was a case, Amanda, where I think you're acting for an owner for a scheme that we were managing. I do recall that the tribunal even included I think costs of travelling. She didn't live in Sydney, this particular owner, and she was travelling back and forth from the country. Even her travel expenses were included in the claim or paid for as a result of its' consequential damage and loss that she suffered.

It's actually a common law provision. I think this is the problem. I think that in strata, people think, "Oh, it's carpet, so it's not included because carpet's not common property," but it's nothing to do with ...

**Amanda Farmer:** Yes.

**Reena Van Aalst:** It's a common law provision if someone causes you damage and loss, if someone hits your car, you don't say, "Oh, well we'll just fix the outside of it but we'll leave the inside because that's not," or whatever sort of arguments people try and

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use. It's just that lack of understanding of common law provisions and the act that has now provided that certainty, and it should provide that certainty to lot owners.

I think now they're even looking at the review to even increasing the timeframe in which owners can submit losses from twos I think to a higher level, maybe to be in line with think the 60 provisions or things like that.

**Amanda Farmer:** Yes, interesting. What I think you've just articulated there, Reena, is that this area of the law is not necessarily straightforward. We think we might know where we stand as an owner's corporation in respect to a lot owner's claim, but the law is often changing. Strata managers don't need to take on the burden, the stress, the risk, as I keep saying, of giving legal advice, which is essentially what you're doing if you're going back to your committee after receiving a letter from a lawyer and saying, "Hey, this lawyer is wrong. That's not what the law says."

Even if you have a hunch that the lawyer might not be on the right track, my suggestion is that the safest course for you as a strata manager is to say to your committees, "We should get a legal opinion on this." It is always open, as we say on the podcast, you advise as a strata manager, your client decides, your committee may come back to you and say, "No, we don't want to get legal advice, we want you to write the following email."

If that's the case, then I also suggest, and I make the suggestion in the training that I do for strata managers online, that you preface your email with, "I have been instructed by the strata committee as follows," rather than putting yourself as the strata manager right in the middle of what may be a future legal dispute before the tribunal and saying, "No, your client is not entitled. No, the owners corporation is not going to pay."

Instead, the right way to communicate the position is to say, "I have been instructed by the strata committee as follows. They do not agree. They do not believe, they do not accept that they need to pay this." Maybe as a strata manager, you agree with that, maybe you don't, but you are not the person who is making that call.

**Reena Van Aalst:** That's right, Amanda. I think you're right in terms of liability and understanding where your role and boundaries are as a strata manager. I think that's really important I think for all professional people to be able to articulate their instructions in such a way that they're not putting themselves as the person who's giving the advice. You're right, when for a person to say, "I don't agree," they are then purporting to sort of give legal advice, which I think is quite dangerous.

I think many people listening to this podcast would probably know many managers, many owners corporations, there has been a prevalent rise in the number of loss of ranked claims, consequential damage claims than ever before. This is all resulting from the rains that we've had, the lack of contractors that we've been able to provide in a timely manner, getting quotes. I've got a building where there about 10 different water penetration issues in the building. That was reported I think late March, and by the time the builder was able to get to it, it was I think middle or late April.

The builders were actually on site doing many other jobs. We're lucky even to have a sort of builder that's there all the time. Then apparently the tenants said, oh, they couldn't live in one of the rooms and they now want loss of rent. What you find also is that these arrangements of loss of rent are made directly with the agent and the tenant or the landlord. The owners corporation is not really given a say in terms of, "Well, yes, is that fair, not fair?" Then it becomes like a fade to complete and we say, "Here's a loss of rent claim. The apartment was uninhabitable on these days or those days."

I think everyone would realise that because of the rain, many owners are suffering losses, both financially, tenants leaving damage to the carpets, to their furniture. We've had wardrobes and people having water damage on clothes. Yes, it's been quite hard I think for many owners corporations. It's really not anyone's fault sometimes that the work can't be done any more quickly than what is occurring. Nevertheless, I think there's got to be some legal advice in terms of how much the owners corporation, like you said, should contribute to, in relation to how that loss and damage occurred, or over what period of time, what efforts were made to try and remediate that or repair it.

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Like you said, it's not black and white, Amanda. To say a straight no is quite dangerous.

**Amanda Farmer:** Yes. I'm certainly seeing more of these claims come up too. You're right, Reena. I spoke about this a couple of weeks ago on our Friday Live session where I had been asked a question by an owner about what it is that makes a property uninhabitable, and why sometimes owners and tenants have trouble convincing owners corporations of that fact.

Since then, I have heard from a few owners who, one of whom has sent me the result of their successful tribunal application, where they were seeking temporary accommodation costs. These cases are now running through the tribunal. From what I've seen, or at least the owners who've reached out to me, they have been successful in getting back from the owners corporation at least some of their losses, whether that's a loss of rent, or a temporary accommodation, or some damage arising from lot property being impacted. We're going to get more of these cases come through.

The message that is being sent home, I think to owners corporations, to committees is yes, as best you can act quickly to rectify problems in the common property that even when you are doing all you can, even when you are acting reasonably and promptly and doing everything within your power, if the owner suffers some loss or damage, then there is a claim there that can be brought against the owners corporation pursuant to our strata legislation.

**Reena Van Aalst:** Yes, exactly.

**Amanda Farmer:** Okay, so got a festive topic we'll talking about today, Reena. Sending everybody off to their Christmas break going, "Oh, ceiling doesn't start leaking, what's the weather like?" Let's move into something a little more cheerful to wrap up our last podcast episode of the year together, Reena. I wanted to thank Reena Van Aalst personally and to share with our listeners, Reena's very generous act in joining me on a recent webinar that I hosted.

It was a webinar last month that I delivered for a team of strata managers who are Pro members inside our online community. These strata managers had asked me as our Pro members often do, "Amanda, we'd really like a training on BMCs, building management committees." I said, "Absolutely. Of course, yes, I can do that. I can deliver an hours training on everything BMC." I promptly picked up the phone and said, "Reena, Reena Van Aalst, will you please come and join me on this webinar training, and share your genius when it comes to the management of building management committees?"

I understand the law, I understand the structure, I know how they work, and sometimes I know how they can become quite dysfunctional. When assisting strata managers in the day-to-day management of building management committees, I thought I'd bring in the expert. We had a fantastic webinar that was very well received by the team that we were training. Reena, I had invited you to share 3 key principles for strata managers to understand when managing BMCs. Did you want to speak to just one of those principles?

**Reena Van Aalst:** Yes, well, I think one of them was a manner in terms of legislation that is governed and the interplay between the Strata Schemes Management Act and the Development Act, which is where the BMCs are governed by. In a sense, understanding the interplay between those two, and really knowing what the function is of the strata scheme and the members. I think there's a lot of confusion arising out of the appointment of the members, how they're appointed, what their role is, what their function is.

I think in many BMCs that perhaps the managers would know about, the representatives sometimes makes decisions based on what they think is the answer to an item on the agenda, as opposed to going back to the strata scheme from which they belong and getting instructions from that strata committee. I think that's one of the fundamental, I think, key points and takeaways that has emerged is where sometimes, and it's hard for a managing agent sometimes to manage a relationship to ensure that the BMC rep is actually doing what the strata plan has asked them to do or the strata scheme, as opposed to what they personally believe.

I think the interplay between having a BMC manager being different from the strata schemes manager, again, sometimes you don't

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know what your rep is saying or doing at the meetings if you're not the manager or your company's not the manager of the BMC. We talked about those sort of practical considerations and challenges that do happen. For most schemes where there is a BMC, the majority of the costs will come into the budget of the strata scheme.

That's where it all lies. That huge amount of levies for insurance, and many of the shared services will then flow into the strata scheme's budget. In a sense, that's where the control over those expenses is quite limited for a strata scheme.

**Amanda Farmer:** Now, some of our listeners will be familiar with building management committees, why they exist, how they operate. Some will be strata managers who are managing BMCs. On the other end of the spectrum, I sometimes am briefed in cases by owners who don't understand that they are even part of a BMC. Often it's the owner of a commercial lot, a shop, for example, who believes they've just bought into a tower block where there's retail down the bottom and there's residential at the top. I'm thinking of one example in particular, I've been working on recently, where there is some work that a shop wants to do, and they believe that they need to get approval from the residential owner's corporation for that work. They have, until coming to me, had no understanding that there was actually a separate owner's corporation, a commercial owner's corporation, and that there was a BMC, a building management committee, that was making decisions about shared facilities between the commercial and the residential.

There was a whole other process to go through, an additional process to go through, to get approval for their work at their shop. They needed to get approval from the building management committee, and to work out what that process was, needed to look at another document called the Strata Management Statement. As basic as that, I'm finding as our communities become more complex, people are buying in with no real understanding of how these structures work.

I did deliver a webinar earlier this year to the Australian Institute of Conveyancers about complex schemes, not just community associations, but building management committees, and attempted to lay out that framework so that our conveyancers, when they're selling advising purchasers who are buying these properties within complex subdivisions, they can be maybe giving just a little introduction to their client about how this system works. It's not straightforward at all.

**Reena Van Aalst:** No, I think also, Amanda, in terms of when people are doing strata searches, the first thing on the CT, it'll say whether there's a strata management statement that's registered on the title of the building, in relation to there being a BMC structure. Then the next point would be making sure that you've got the minutes and the agendas of those meetings. Now, for many of the BMCs that we manage, we don't manage the subsidiary. Sometimes we manage all of it, which makes it easier, but if we don't, we in two particular schemes, we actually manage the strata's schemes that form part of the BMC, but not the BMC itself. We have to keep asking to make sure that we get copies of the agendas in minutes because they're always being sent to the rep. I keep trying to impart on the manager of the BMC that the rep is not the entity. The strata scheme is the entity. You can obviously send it to the rep, but you need to send it to us as well because we need to make sure that we have a copy on our records, so that when someone does a search, then they can see, well, these are the BMC agendas and minutes, and this is how the costs are being formulated and agreed to and budgeted.

Also, the other thing I think for BMCs that people will probably try and find a bit hard to understand is that they're all different. There's no sort of standard way of ... there are standard provisions that must be contained in the SMS of how they're to be governed, but voting rights could be different based on the shared facility that's being voted on. The older SMSes has had the one vote per lot, so a large strata scheme in a carpark would've the same equal votes, whereas now the new ones, the more new ones, the last, say, 10 to 15 years would have voting rights based on their allocation of a shared facility perhaps, or overall percentage allocation of costs.

It can be quite complicated. The accounting part of it also is much more complicated in terms of how you do the accounting. It's not just, there's different percentages, and the coding of invoices is really important to make sure that you're coding under the correct shared facility item. Otherwise, one person may be paying too much or not enough, based if it's incorrectly coded.



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**Amanda Farmer:** Therein lies the value of having a manager who is very experienced, as Reena is, in working with building management committees. I think, Reena, when you were working with Dynamic Property Services, that company was managing a very high number relative to other strata management companies of building management committees. You really developed an expertise there that I know you've carried over to Strata Central.

Being able to share your experience, your learnings from serving building management committees, the what not to do, the what to look out for, to be able to share that with other managers was just so valuable. Thank you for your time on that webinar. If you are a strata management company wanting to learn more about BMCs, do reach out to me. I can let you know how you can access that kind of education. Maybe I can convince Reena to join us for future BMC webinars for our strata managers. Thank you. I'm pitching that as our joint win today for our last podcast episode of the year.

**Reena Van Aalst:** Thank you, Amanda. It was very enjoyable, actually. I do like helping other strata managers benefit from what I've learned over the years. Whatever we can do to help those other managers out there that perhaps have these topics or any other things that I'd like to learn about, yes. I'd love to join you on another webinar.

**Amanda Farmer:** Fantastic. Well, what a good way to wrap up 2022. Thank you all of our listeners for tuning in this year. I've said it's the last chat that Reena and I are having this year. It is actually my last episode of The Your Strata Property podcast for 2022. Next episode will be out in the new year. I'll look forward to sharing that with everybody and catching up with you, Reena Van Aalst, next year.

**Reena Van Aalst:** Well, I want to wish all our listeners, Amanda, a wonderful Christmas and break, and happy holidays, and enjoy the time off. I think everyone needs it after these last few years in terms of COVID and all other challenges that we've had to endure. Have a great break, everybody.

**Amanda Farmer:** Indeed. Happy holidays. 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](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?