

**Publication Date: 23 March 2023**

**YSP Podcast Transcript: Episode 354. Illegal hard flooring, child safety nets, and a bathroom reno: inside a member call**

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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'm your host, strata lawyer, Amanda Farmer. This week I am taking you inside one of the opportunities offered exclusively to members of the Your strata Property online membership community. What you are about to hear is an edited-down version of what we refer to on the inside as a member call. Every member of our online community has the opportunity to book in a one-hour, one-on-one online call with me, where we workshop a specific strata problem, or sometimes a few strata problems. Our members finish up with the answers, the action steps, and the resources that they need to move forward.

Last year I spoke with a member who had bought into strata for the first time and was in the process of seeking approval for some renovation work. That work included the installation of hard flooring, the installation of child safety nets on the balcony, and the renovation of an original bathroom. There was a slight catch with the flooring. Being new to strata, this owner didn't know that they first needed to get the approval of their strata committee before laying their new flooring. So, the approval that they were actually trying to seek was retrospective, the work had already been done. What I'm bringing you today on the podcast is the recording of this member call where we discuss all of these issues.

You'll hear me walk the member through the options available to the owners corporation in the context of what is really an illegal flooring installation. We talk about how I successfully had my own child safety nets approved in my building and my tips for success with that type of installation, and I explain why a bathroom renovation is actually a good thing for an owners corporation and how this owner might best sell the idea of their bathroom renovation at the upcoming general meeting where they have a motion on the agenda for approval.

This is an edited version of the call to protect the identity of the member. You won't hear their voice, it's just my side of the conversation. The full versions of these calls including the member's side of the discussion are saved to our members' video library together with a copy of the transcript. If you're a member you'll know exactly where to access these. We generally release at least two member calls every month.

Now I've been recording these calls with members who are sometimes owners, and sometimes strata managers for about six years now and our video library has become a treasure trove of strata guidance on all types of issues from strata management contracts to how to commence an NCAT application, repair and maintenance obligations and lots more. Every member has the opportunity to book in one of these calls with me whether they've joined on a monthly subscription or an annual subscription, it is one of the most valuable and valued parts of the membership. These days I charge a minimum of \$1,000 for meetings with new clients of my legal practice so to be getting the equivalent time with me as part of your membership is incredibly valuable. Because membership is nowhere near \$1,000, you can join us now on a monthly membership subscription for just \$67 and immediately book in the next available slot for a member call. If you're interested in checking out all that membership has to offer in addition to these member calls, the place to go is [stratamembership.com](https://stratamembership.com). There's a link in the show notes for you.

Right now, I'll take you on over to today's podcast episode our featured member call. Enjoy.

Now, you've asked me what are the options if the committee now won't approve, and we're talking about a retrospective approval because your flooring's already in place. If they don't approve your flooring, they may do one of two things, or maybe one of three things really, because one option is they may do nothing. They may say that your current flooring as you're using it today is causing you to be in breach of your noise by-law. So, as I said, I haven't seen your by-laws, but you most definitely have a by-law in place about noise, which says that an occupier must not create noise sufficient to disturb the peaceful enjoyment of somebody else.

Now that is what your neighbour is going to complain about. They're going to say, "Well, this flooring is causing a breach of the noise by-law. My peaceful enjoyment is being disturbed." So, the owners corporation may pursue you for breach of that by-law.

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My experience in those situations is often that the owners corporation doesn't like to do anything and leaves it up to the neighbour who's allegedly suffering from the noise to take their own action. They say, "Look, this is an issue between two neighbours. We're not going to get involved. No one else is bothered by this. It's all too hard, it's all too expensive. If you, downstairs neighbour, have a problem, then you can apply for mediation and you can try and resolve it with your upstairs neighbour." Your downstairs neighbour may or may not do anything.

The other thing they may do is request you to lift up the flooring because it is work that was never approved and this is the complicating factor. If it was just an issue that the flooring was noisy and it wasn't this issue about approval, it would be more straightforward. They do have this other option of directing you to remove unauthorised work if it doesn't get approval. Now, that's because probably your by-laws and also the legislation, section 110 in the strata Schemes Management Act require you to have approval to do this work. And Section 110 says you need an ordinary resolution at a general meeting. And that decision-making can be delegated to the strata committee by way of a by-law. And it sounds like that's what your building has done and that's why it's in the hands of your strata committee. So, if they don't approve it, you'll be in breach of section 110 and you'll also be in breach of probably a by-law that requires you to get approval for hard flooring.

So, this is what they might do if the flooring doesn't get approved. Again, I say might, they may do nothing. But, they do have a legal basis to direct you to remove the floors, it hasn't been approved. You stand there and say, "No, I won't." It's for them, the owner's corporation to then take the matter further. And that's to the tribunal, starts with mediation. Maybe they'll issue a by-law breach notice, and if it looks like that's the direction they're going in, that might be the stage where you say, "Well, your failure to approve my work was unreasonable."

And, I'm not sure again what your by-laws say, but I'll just have a look at what section 110 says, okay, so you should be able to see section 110 there on the screen. The owner of a lot in a strata scheme may carry out work for the purposes of minor renovations with the approval of the owner's corporation given by resolution at a general meeting, a special resolution is not required. The approval may be subject to reasonable conditions and cannot be unreasonably withheld. So, it's there in the legislation that they can't be unreasonable about their refusal to approve. So if they don't approve, I'd be asking them for reasons, "Why didn't you approve this? And is there anything I can do, I can add, I can change to obtain this approval?" We want to be seen to be acting reasonably.

So if it's just a matter of, "We don't like you. We don't like that you went ahead and did it anyway." Then, you have the opportunity to go to the tribunal and say, "Well, I want an order that I can keep my floors, because the owners corporation has acted unreasonably in withholding approval." The other part of this section that's relevant here is, you'll see that, and I said this earlier as well, minor works can be approved by the owners corporation with an ordinary resolution. So, that's a simple majority vote at a general meeting.

So if the strata committee won't approve it, it is open to you to propose a motion for the next general meeting, attempting to seek approval from the general meeting. And if you get that approval from the general meeting, then that will override any decision of the strata committee.

What I'm talking about is proposing a formal motion before the next general meeting. So you'll have to get your motion in time, so that it's there sitting with the strata manager before an agenda gets prepared for the next general meeting. Seeking the retrospective approval of the owner's corporation for the already installed floorboards. You would have to be confident that you would get that. Otherwise, you probably wouldn't bother with that path.

So, what I'd suggest to you, if you're going down that path where the strata committee had rejected your application, that between then and the next general meeting you're having a chat to other owners in the building and the owners are the ones with the vote. So, they'd be the ones to be talking to, explaining to them what work you've been doing, inviting them in, have a look, maybe they've done something similar in their apartments or they're looking to do something similar, and trying to explain to them that what you've done is not at all controversial and improves the value of the building for everybody.

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"And please can I have your support at a general meeting, because for whatever reason the strata committee's just gone rogue and won't approve this. And the expense of having to take this out, or possibly the expense of litigating the issue is just not a place anybody wants to be." So that's the approach you might be taking ahead of the next general meeting. If you had a motion on to seek the owner's corporations approval. Are you aware whether any other apartments have hard flooring in the building?

A bit of a surreptitious way perhaps to be handpicking who you might want to talk to is to do a Google search of each apartment number in the building and see if there are pictures online, realestate.com or similar, where apartments having listed for sale or rent and you can see from the photos they've got hard flooring. Then I'd be making contact with those people and saying, "Hey, I can see you've got these beautiful floors. I knew there were apartments in this building who had these beautiful floors and I was so inspired that I wanted to do the same in mine." I don't know. And you could maybe do some homework to find out first whether they've got approval or not, because they might not.

Or you could just go in quite openly and say, "Look, I don't know what you went through when you were putting your flooring down, but this is what I'm going through. And I don't know if you've got any suggestions for me for how I might navigate that with the committee." And that person might say, "Oh gosh, well, do I have a story to tell you this is what happened to me." Or they might say, "Oh no, it wasn't a problem for me." So that's just going to arm you that history, that background knowledge to be able to say, "Well, this is incredibly unfair and unreasonable, because I'm being singled out here. Why me? How come units 17, 16 and 14 are allowed to have these, but I'm not?" So that's a bit of homework worth doing. And then targeting those owners to talk to. You may not know who is an owner occupier and who is the tenant. So one way to get that information is to ask the strata manager for a copy of the strata roll.

That's the document that has all owners names and contact details, where an owner's contact details are the address of the property. Then you can be pretty confident that they're an own occupier. Not always the case, but you can be pretty confident.

Bear in mind, be prepared that the strata manager will say to you, "you can't have the strata role. It's private. It has private personal details. You are not allowed to have it." Happens all the time for years. I've talked about this inside the membership. We've got some resources for you to help you with that conversation because if your strata manager says that, they are legally incorrect, the tribunal has determined this issue on a number of occasions. You as an owner are authorised to inspect the records in the owners corporation. And if you would like to take a copy of those records, which includes a strata roll, then you are entitled to do that. Sometimes our strata managers need to be reminded that that's the law. So if that happens to you, feel free to jump in the forum and let me know and I'll direct you to some template letters and things that have helped other members in that situation.

So, that's your flooring. Shall we talk about child safety nets?

I can jump in. My understanding is that you are wanting to install child safety nets on your balcony and you have been told that because these are going to change the external appearance of the building, it is major work that requires a by-law and a special resolution. Now, you've told me that by-laws on the agenda for next week, but in the meantime, I think you've also asked me, "Is that right? Is it really major work? Do I really need this special resolution? Isn't this a safety device to prevent harm for children?" And I imagine you have the usual by-law about being able to install such devices without approval.

Yes, so I agree with you. I have been through this process both on behalf of clients and personally, I'm not sure if you're aware, in my own building where I had safety nets installed on level seven of my building, and I had the same discussion with my committee and I said, "Look, we've got by-law..." I think it's usually by-law five in the model by-laws that say, "You can't damage common property. However, this doesn't prevent the installation of safety devices, screens to prevent harm to children and to keep out insects, and pests." And whatever the wording is. "As long as those devices do not impact the external appearance of the building." And, I went through the process of showing my committee some examples of what the safety nets look like, and I'm not sure which ones you are using if you're using Luciana at Safety Nets for Life.

Perfect. So they're great. So they're exactly fit for purpose. I know what they look like. And on her website, she's got some great photos including of my balcony, the nets are practically transparent. So you just cannot see them.

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My position is that I don't believe these nets affect the external appearance of the building. They're designed in such a way that they don't. Have you shown your committee pictures of what the finished product is expected to look like, just with reference to other installations?

Yes. It's a tough one. In my community, as I was saying, I explained all of that to them and I said, "Look, I don't need a by-law. I don't need a special resolution. However, I'm happy to put one forward, A, because it costs me nothing, because I'm a lawyer and I've got a template here. I'm happy to put one forward as a show of goodwill in order to keep it on the record that these are installed and that to the extent the nets are bolted into the common property, which they are, then if they ever come out, then we'll fill in those holes and make sure that no waterproofing is damaged or anything like that."

So I did in my community end up proposing a by-law. And that's the by-law that you've accessed through the membership. And that by-law went through, sailed through. And, I would hope in your situation exactly the same result will occur, because we're talking about safety. And if I were you, next week, I would speak to the motion absolutely and make sure your strata manager gives you the opportunity to do that. Is your meeting online or in-person?

Okay. So, when the motion comes up for consideration, the strata manager may say, "This motion's been proposed by, she's in lot X. You can all read the by-law, it's all there. Does anyone have any questions?" I would jump in immediately if I was you and say, "Oh, just a minute, Mr. Chair. I'd just like to say a few things about this motion. Number one, I'm not sure if anyone's familiar with the net zen system and the company Child Safety Nets for life. If you're not, I've got a web address for you. I'm going to put it in the chat." Or maybe tee up the strata manager beforehand and just say, "Hey, would you mind? This is a web address that I'd like everybody to have to go and check out, Luciana's website. These are the nets I'm talking about. They're not black." Sometimes cat netting can be black and quite thick. I've worked with clients before who've wanted to install cat netting. It's very different. It is made especially for child safety. It is designed to withstand weight. It is installed in a way that's very taught and it's a fishing line when it gets installed. And, it is almost transparent to the outside view. Not intrusive at all. And you'll see some examples of this on the website, which you can share with owners.

So for the purpose of next week's meeting, I would be saying, "I often have young children visiting the apartment. We are on level \*\*." There has been extensive research done... I don't know if this is on Luciana's website, but you could also Google it, extensive research done by strata Law academic Dr. Kathy Sherry in respect to child safety on balconies in apartments. And, that was the instigator for actually our change to the strata law back in 2018, where we now require our windows to be child safe.

So there is a law which your strata manager will be well across, and maybe those in your building as well, having gone through the process of having child safety devices fitted to windows, because children were falling out of windows, as well as off balconies. And, Kathy was the one who connected me with Luciana. So if you Google Dr. Kathy Sherry in Child Safety and Apartments, you'll find a lot of her research that instigated the change to the law in relation to child locks. And then, Luciana has taken it to that step of bringing this technology over from South America, I think, for the child safety nets.

So, your position is quite strongly backed up by some very well-respected research. And, what I would be saying, and I took this position at my general meeting where I was proposing the by-law to say, "This is not a risk that this owner's corporation wants to leave itself open to. I have children in this apartment. I am on level \*\*\*. It is not safe.

The balustrade is not child safe. I think we can all accept that the balustrade is not child safe." You might say this, "I'm not asking owners corporation for you to upgrade the balustrades because I have an alternate solution. But I need your support to approve that solution."

So it's your way of saying, "Look, you don't propose this, then I might be seeking an upgrade to the balustrades if they're currently non-compliant. But here's a solution that I'm prepared to pay for. And it is not cheap. I know it is not cheap. The nets will be installed by a qualified contractor." You can say. Which I do recommend. "And, I'm prepared to take responsibility as I'm saying under the by-law to repair and maintain any issues with the nets, any damage to the common property. It will all be my responsibility.

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And for as long as that by-law on the title, it will be the responsibility of any future owner as well." So the owner's corporation has every protection. There is no reason to say no to this proposal. And there's a heck of a lot of reasons to say yes. That approach that you've got to put them in a position to say, "Oh, I'm going to look like a child hater if I say no to this." And they will be exposing the owner's corporation to significant risk.

And it's boys. Kathy's research will show you. I mean, when we decided to move to an apartment and we had Callum who was five at the time, and it's a gorgeous apartment, we still have it and beautiful view. And, I remember standing on that balcony going, "Oh my God, we will have nets. Well, there won't even be a question about interrupting the view or what they'll look like. We will have nets and any which way I will get these nets through because I couldn't sleep just to have little kids and boys." What I was about to say, sorry, was that Kathy's research says it's boys that go over, it's boys, because they just don't have that part of the brain. They're just adventurous. I don't know. Yeah. They're crazy. Yeah. They don't think. And the nets are just wonderful to have, you know, and what I didn't expect is to be out there playing ball games on level seven on your balcony. I didn't. And of course, when you think about it now, well, of course, that's what the nets let you do, but no one else can do that on their balconies. And Cal would sit out there and sit up on the top of the barbecue and be, you know, just completely safe, completely safe. So yeah, they're great. Such great peace of mind. Yeah.

So hopefully that gives you some ideas for next week. If it fails, if it fails, I think give some more thought to whether you pursue the angle of, well, you know what? I don't need a by-law anyway. This is not going to affect the external appearance. It's cosmetic work that is for child safety. I'm just going to do it anyway. Give some thought to that.

I think you've got a good argument there. And that sows a seed, "Well, if we knock down the by-law, she's probably going to do it anyway, because she thinks she can. And then, we don't really want to have a legal argument about that." So, I would weave that in when you speak to the motion.

And the beauty of being online is you can type up your notes beforehand. I don't know how comfortable you are speaking to a room. But, you can read it out. And you can even say that, "Look, I'm quite emotional about this issue. I'm quite anxious about it. So, I've made some notes so that I don't forget the things that I want to say. And if you don't mind, I'm just going to read those out."

There are a few things that I haven't seen, but yes, these situations I have been in. And when you've been in them, then it's easier to help others who are going through them.

Any more questions?

Hi, this is Amanda in real-time, just jumping into the episode here. So far, you've heard me talk about hard flooring and child safety nets. What I am about to cover with our member is a proposed bathroom renovation and a by-law that is on the agenda of an upcoming general meeting seeking approval for that renovation. Here we go.

If they have an issue with something that's in the by-law that we want this added or we want that added, then as long as it's easy enough for you, I'd be saying, "Yes, of course, we can do that. We can do that." And it is possible, I'm just thinking about your timing, if they say, "Oh, we want a clause in the by-law that says you'll get a waterproofing certificate and you'll provide it to us when you're finished." I would suggest saying at the meeting, "Yes, that's fine. Not a problem."

"I'm happy to agree to that now. And, we can amend the motion, so that the by-law includes those words and then we can vote on the by-law as amended."

So, they're not saying, "Go away, add those words in, and then convene another meeting and come back with another by-law." That's just a waste of time. So say, "Look, if everybody supports that approach, yes, let's add clauses 1B to the by-law that says, 'When I'm done, I'll provide a waterproofing certificate.'" And the strata manager should be across that, be able to say, "Yes, that's fine. We're not changing the effect of the by-law, we're just including some more protections in there for the owner's corporation." So whatever it takes to get the by-law through, if it's things you're prepared to agree to, then put them in at the time, maybe before the

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meeting, do your research about other lots in the building and say, "Well, look, three did it last year. Of the 18 units on my research, 60% have new bathrooms."

"So, everyone else has had this opportunity. It's now a value add that I would like to bring to my property. And, when we do this, when we upgrade our bathrooms and we take on responsibility for the future repair and maintenance of that upgrade, we're reducing the burden on the owner's corporation, because legally, an owner's corporation remains responsible for original common property. And that includes original bathrooms." And I'm not sure how old your building is.

Right now your bathroom is the responsibility of the owner's corporation. If you have a waterproof membrane fail, if you have cracked tiles, the owner's corporation is responsible for fixing that.

And, I've seen that in communities become incredibly expensive over time, because especially if there's original building defects that were not properly addressed back when they could have been, and then everyone's waterproofing starts failing at the same time, the cost of having to do all those bathrooms. But the minute you get approval pursuant to a by-law to renovate your bathroom, and as long as your by-law says, as I'm sure yours does, that you will take responsibility for that work and all future responsibility for any common property that's affected by that work, then the owner's corporation's off the hook. So that's one less bathroom that they have to deal with ever, ever again, whether you sell, the minute a bathroom's renovated and there's a by-law shifting responsibility, the owner's corporation's off the hook. And you can use those words in the meeting, say, "I want to take that away from you." And if you can find out whether there's been other by-laws registered for bathroom renovations- In your contract when you purchased, there will be a copy of the registered by-laws. so go back to that contract. There'll be all of the model standard, boring, boring by-laws, and then there'll be additional by-laws that have been added over time. And you may find, maybe, maybe not, it's a young building, yours might be the first. But, if it is the first, then it's important to make this point because they may not have heard it before. But if unit four has done a bathroom renovation, you can say, "Look, there's special by-law three, which was made last year, was to approve unit four's bathroom renovation. And, under the special by-law unit four is now responsible for their lovely new beautiful bathroom. I'm asking for the same benefit and I will take the same responsibility under my by-law. And so, what that means is now the owner's corporation, you're not responsible for 18 bathrooms, you're responsible for 16 bathrooms. Great. Good news for you." And as time goes on and people come in, bathrooms get older, people want to renovate, that number will increase. And the owner's corporation's responsibility will decrease, thank goodness.

So I know in my building we got 37 lots. And, when a waterproof membrane fails or a shower starts leaking, I go, "Is that a renovated bathroom? Send me a picture. Let me see. Is that original? Is that renovated?" And if it's a renovated bathroom, I go, "Oh, great. Not our problem."

If it's original, I go, "Oh God, I can't believe someone still has an original bathroom where we have to fix it." So that's the sell. Yes. And to put it to them that way, because a bathroom renovation... If your shower's leaking, you got to do the membrane, the tiles, then you got to match like for liking, could be 10 grand a pop.

I think we paid recently five grand for somebody's... What happened in our building actually is we paid five grand for Megasealed to come in and seal a shower. Not six months later, that owner said, "I'm going to renovate my bathroom now." And we went, "Oh, that's great. I wish you could have said that six months ago." So that's the pain that can happen as the building gets older, and where original bathrooms are still in place.

So, let me know how you go with that one. I'd be really pleased to hear how that one goes down with them.

All right. Excellent. And then, depending on how it goes, then we can discuss next steps.

But, there is a mediation process. The whole concept of reasonableness is something you might want to filter into the conversation on Monday, is to just say, "Look, the terms of my by-law are fair and reasonable." If somebody speaks to the motion and says, "Oh, well we don't think you should be allowed to do it because it's going to be a week's worth of construction noise." And you might say, "Absolutely, understand that, my contractors will be very mindful to do the noisy work at these particular hours."

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If somebody's on a call or is a shift worker, please communicate with me and we'll do our best to accommodate all of that. But at the end of the day, it's a week. It's a week in an entire future of this building where I'm going to take responsibility for this bathroom. And to object on the basis of noise is, in my view, unreasonable." And you filter in those words that the strata manager will be going, "Ding, ding, ding. She knows what she's talking about. Better be careful here."

Let me know how you go.

**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?