

## Ask Amanda Now: 15 December 2023

In today's "Ask Amanda Now" session, Amanda answered Margaret's question: **If a compulsory manager signs a multi-million dollar building contract and then their management terms end, does the OC remain bound to the contract?**



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Hello and welcome to Ask Amanda. Now, this is our short Friday afternoon session. I am here to answer one strata question for you, one question chosen earlier from those that have been sent to my inbox posted here on the page. Thank you very much for tuning in on this Friday. For some of you the last official Friday of the year in the office,

that is the case for my legal practice. That is for sure, and that's part of the reason why I'm kicking back on the lounge here, Mina, who is supporting me, me on live today, which is saying, Amanda, camera's moving. What is your where? Why is your camera jiggling around? And I said, it's 'cause the laptop is literally on my lap and I've got some cushions and whenever I move,

the laptop moves. So I'm trying hard not to breathe. I'm also here on the lounge because I usually sit just over there at my desk and behind me, what would've been behind me are lots and lots of boxes, boxes of goodies that have started to arrive. Not for Christmas, no, not for Christmas, but for our event that we're having on the 23rd of February,

right here in my hometown in Mudgee, we are doing a one day education day CPD event for our New South Wales strata managers. They're getting some special gifts. It's gonna be some gift packs, some gift boxes that are coming together really nicely. And all of the parts moving parts have started to arrive and they're getting stacked up in my office. So lots of brown boxes that I'm looking at here.

I'm not gonna tell you what goodies are in there because that's gonna be a surprise for our event attendees. But I can't wait. It's all coming together. I'm seeing Margaret come on in saying Hi, Amanda. Happy Friday. Happy Friday to you. Margaret. If those of you who are also here live, I was gonna say, if anyone else is here live,

yes you are. I can see you there. Feel free to drop me a hello here in the chat. This is our last official Friday chat for 2023. I mentioned last week that Michelle and I, Michelle who assists me in our legal practice, will be in Sydney next Friday having a little bit of a Christmas lunch. And we'll see how it goes.

We might pop in, say a quick hello. But otherwise, this is the last Friday live chat that is on the schedule. It is an ask Amanda. Now that is a shorter session where I'm going to answer one question for you. Whose question is it going to be? Iggy's coming in saying, hi, Amanda. Long time no see, long time no see.

Also Iggy, well here I am. You get to see me, but I don't get to see you. Hopefully I can see you in person very soon. Michelle's Excited for party time. Yep, that'll be us. We're gonna be by the water. We're gonna be in a really lovely venue next Friday, so I don't know, we'll see. I'm putting Michelle on the spot here.

Michelle's up for it. We might pop in and say a hello. I know many of you'll be out Christmas parties next Friday. Okay, we are gonna answer a strata question. Thank you for playing along, Mia. Bring up our chosen question for today. Today I have chosen Margaret's question. We had a few, Margaret's actually asked some questions. So if you're a Margaret and you're tuning in May or may not be your question.

Margaret has asked if a compulsory manager signs a multimillion dollar building contract and then their management term ends, does the owners corporation remain bound to the contract? Now as always, that's my summary of what was really a longer form question that came into my inbox is a couple of components to this question. Not only was Margaret asking, does that building contract remain on foot even though the manager who entered into it on behalf of the owners corporation is no longer the manager.

But I think Margaret was also asking, does the fact that we've entered into this expensive, probably long-term contract mean that the manager has to stick around? Does this compulsory manager have to stick around for a longer period to ensure that the contract is completed and that the contract work is done? So great question. This situation of compulsory management's coming to an end has been front of mind for me this week in about three different cases that I have on my books.

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In my legal practice. We are or have been looking at the end of compulsory management terms. It must be something about the time of year. I've got two cases where management terms are ending in January. So I have some clients now looking at the diary saying, hang on a sec, one more month and we won't have our compulsory manager in place anymore.

What does that mean? And I've had another client who was responding to a tribunal application where their neighbor was trying to get the compulsory management extended. My client was opposing that application, not on the basis that the compulsory management shouldn't be extended, but on the basis that the current compulsory manager was not fit for the job and should be replaced by a different compulsory manager.

Now in that case, the tribunal delivered its decision this week and the decision was in my client's favor, the compulsory management is going to continue, but a new manager proposed month by my client has been put in place. So that is happy news for my client. I'm not gonna say too much more about that case at this point in time, but I'm hoping that it's something that I can get into in a little bit more detail with you early next year.

Lots of lessons to be learned from that one, but that is part of the reason that I have chosen Margaret's question today because these considerations of what a compulsory manager may have committed an owners corporation to during the term of their appointment, how an owners corporation is going to be left, what situation they're going to be left in when that compulsory management ends. They're all really important questions that I know many of you think about either as managers or as owners.

And I have certainly been asked about before. Now I'm making an assumption here in having this chat because we have talked about compulsory management a fair bit here on our live chats. I've done webinars about it, I talk about it on the podcast. We've got a whole thread about it in our members' q and a forum. I'm making the assumption that you know what I'm talking about when I refer to compulsory managers and when Margaret refers to compulsory managers here in her question, we are, and I'm gonna refer to the New South Wales legislation, I'm pretty sure that Margaret is in New South Wales. We are talking about a situation where an owners corporation is not functioning satisfactorily. Those are the words used in our New South Wales legislation. And somebody, usually another owner and owner applies to the tribunal NCAT for an order that a strata manager be appointed essentially in the position of an administrator,

a strata manager with all powers of the owners corporation of the Strata committee. And the idea is that that manager comes in and tidies the place up, ensures compliance with legal requirements, make sure that the building can get back on track and can start functioning properly again. And that's why we end up so often where buildings are under compulsory management. We end up with these major projects being on foot as they are in Margaret's building.

And the figure, I think in Margaret's email was some four or \$5 million worth of building work that needed to be done. The compulsory manager's been in place for some time, I'm gonna assume maybe it's a two year appointment. And it takes time for the groundwork, the legwork to be done, to set up a contract like that, to get scopes, to get quotes,

to get tenders to then enter into the contract. And it's certainly not the first time that I have seen a compulsory appointment coming to an end where the manager has only just got to the stage of signing the contract and the work hasn't even commenced. So these are troubled buildings. So yes, often the case that we're coming to the end of a compulsory appointment and saying,

well, hang on a sec, we haven't solved all the problems. What are our options? Or we're coming to the end as in Margaret's building. And there have been some really big decisions made, whether they're about entering into a contract, whether they're about raising special levies, whether they're about entering into strata loan contracts, maybe some decisions have been made to make bylaws compulsory managers have the power to make those decisions,

to make bylaws. There might be bylaws about common property rights that are getting made when that compulsory appointment ends. Where does that leave the community? I'm gonna answer it for you. I'm gonna answer it for you things, some more of you coming in and saying hi. I think Michelle's telling me that she's up for a quick chat next Friday when we're together,

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we can pop in together. Katrina is here saying Hi. Hey, pat, Katrina. Hey Shana. Happy Friday to you. Hey Bill and Ben, you've come on in. Alright, so am Mina. We'll just bring Margaret's question up again so those who've just come in can understand where we're heading here for. Compulsory manager signs a multimillion dollar building contract and then their management term ends.

Does the owners corporation remain bound to that contract? Short answer to that question is yes, yes. Even though in entering the contract, the compulsory manager is exercising their power. They're very broad, very serious, very effective and important power to act on behalf of the owners corporation. It is actually the owners corporation as the legal entity that is the party to the contract.

So the strata manager has signed up, the owners corporation, applied their seal. What they've done has been in their capacity as representative of the owners corporation. The owners corporation remains bound to that contract. And I appreciate that. That can be a frightening thought, frightening experience where maybe this compulsory management comes to an end. We've just signed this contract. There's a huge project to be completed and the building is still not functioning as satisfactorily or as cooperatively as it could do.

But the fact is that that contract is assuming everything else has been done correctly, legally binding. And just because the compulsory management term ends doesn't mean that the contract comes to an end or is not otherwise valid or effective. When I got some more detail, Margaret gave me a little bit more detail than this in the email. And I think what was also being asked,

or what Margaret was also wanting to understand is whether because of the existence of a big serious, important scary contract like this, the strata manager's term of appointment continues or whether it should continue, is the strata manager essentially bound to the building in the same way that the building is bound to the contract? And short answer to that is no, no.

The strata manager's term of appointment comes to an end when the tribunal says the term comes to an end and the tribunal has set that date when they made their order way back in as part of those tribunal proceedings. So the tribunal in New South Wales can make an order for a compulsory appointment of up to two years. I see appointments for six months, I see appointments for 12 months,

for 18 months. I certainly see appointments for two years. So unless somebody, a lot owner has to be a lot owner applies to the tribunal to have that appointment extended renewed. Technically it's not an extension, it's not a renewal. It's a fresh, becomes a fresh appointment unless somebody applies for that kind of order. Then once that expiry date comes about two years is up,

then regardless what the Strata manager has done in the name of the owners corporation, regardless what contracts the strata manager has entered into, what levies have been raised, what strata loans may have been taken out, their appointment comes to an end and it's up to the owners corporation to then decide how it manages itself. And I would like to think that in this kind of a situation where a Major works project is about to commence,

there's obviously a lot going on in this building. I would like to think that the owners are already talking about thinking about what they are going to do when that appointment term comes to an end, before that appointment term comes to an end. Are they going to engage a strata manager? What, what we might call a voluntary as opposed to compulsory strata manager?

Are they going to hold a meeting and enter into an agency agreement with a strata manager so that they're not left lonely and wandering and worrying about what they're going to do? Are they perhaps going to appoint the current compulsory strata manager on a voluntary basis? Maybe they like what that person's been doing and they want to then that person to continue in that role and therefore appoint that person on a continuing,

continuing basis even when their tribunal audit appointment ends. That's the possibility too. But where this type of work, these very serious obligations, contractual legal obligations are present in place and need to be complied with, it would be a brave building decided that simply lets the compulsory appointment end and doesn't put a suitable professional in place to assist them moving forward. And all of that assumes,

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of course, that all of the owners accept that the building is doing well, is functioning now satisfactorily has got over its period of discomfort, poor performance, and they don't need to continue the compulsory appointment. No one's gonna go to the tribunal and seek an extension it. I'm assuming that perhaps that's the situation that Margaret's building is, looks like there have been some steps made in the right direction if we've signed a contract for multimillion dollar building work.

Of course, if that's not the case, then there's still dysfunction and somebody could go to the tribunal and seek to continue that appointment or have a fresh appointment. So good question there from Margaret. It is one that I, as I said earlier, is front of mind for me as I have a few clients in a similar position at the moment looking at Extending appointments,

looking at replacing compulsory strata managers with new compulsory strata managers. But the short answer to Margaret's question is, yep, owners corporation remains committed to that contract even though the owners had no say in entering into it or who it was with or how much it was going to be. The compulsory manager did all that. And unless extended by the tribunal, the compulsory manager does not remain in place simply to administer that contract or to ensure that contract is complete.

So that's our crash course in that aspect of compulsory managements here today on Ask Amanda. Now, that was our one strata question answered here on the back lounge with you this afternoon. Shana sang, love your Blonde hair. Thank you. Is it blonde than usual? Have had a visit to the hairdresser, Shana, I love how you women notice these things.

Thank you. Very kind. Thank you very much everybody for joining me today. Those of you who are shutting up shop for the year, strata managers, other professionals, business owners who are looking forward to a break, do enjoy. And you know, I can, I wanna say goodbye, but I just, I, I, I know we'll pop in next week.

We'll pop in next week and say our goodbyes give you a cheers for a festive season and the new year then just feels right. That feels right. Hey Kareem, thanks again for another interesting session. My pleasure. Thank you everybody for joining me on this Friday. Enjoy your weekend in strata, enjoy your festive celebrations and I'm just gonna, so I'll catch you next time. Bye for now.