

Ask Amanda Now: 19 January 2024

In today's "Ask Amanda Now" session, Amanda answered Ruth's question: "Our strata manager recently sold their business. How do we know if they have legally transferred our contract to the new business owner?"



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Hello and welcome to Friday Live. I am your host, Amanda Farmer, and we're going out live to the Your Strata Property Facebook page. We're heading out to LinkedIn. We're going out to YouTube. How has your week in Strata been this week? Now I've just announced there at the top of our live stream that this is Friday Live. It's actually a little bit different to Friday Live.

This is an Ask Amanda now session that is your short 10 or 15 minutes. Maybe I'll stick to it session where I can answer one strata question for you. We always put the call out earlier on a Friday. It goes into your inboxes. We pop it here on the Your Strata Property Facebook page. Do you have a strata question for me? And many,

many of you jump in and ask your questions. They're in my inbox. They're here on the page. We've had quite a few today, and that may be because we've been away for a little while. This is our first ask Amanda, now session for 2024. Welcome everybody. Lots of you coming in live. I can see you there. We have chosen one from those many questions that have been asked for me to answer here today,

so we're definitely going to get to that. Before we do though, where am I not in my usual home studio today? Not sure that you guys have seen this lovely part of my world before. I am visiting my parents and we are in Sydney and I'm actually sitting in the grounds of a childcare center that is operated by my mom, Val Farmer.

She owns Care Alott Childcare Center. And I am lucky enough, center is closed, no kids around, they're on holidays, closed for a little while, and I've come out here to enjoy the beautiful weather and get some light because I forgot to bring my traveling light. And I'm sitting here in the playground of the childcare center. So I'll give you a little spin.

The dogs are tucked away inside so as not to interfere with Friday Live. Give you a little look here. It's a new, it's a new one for us, isn't it? But I'm all set up ready to talk strata in these lovely grounds, and I'm very grateful to my parents for being able to facilitate this for us. This is the Traveling Strata Show.

The Traveling Strata lawyer, wherever we can, wherever we are, answering your strata law questions. And we do have a question here to answer today. Bring that one up onto our screen. The question today that I have chosen to answer is from Ruth. Now, this is a summary that you can see on the screen of Ruth's more detailed question. Ruth is saying Their strata manager recently sold their strata management business.

And Ruth wants to know how do we know if they have legally transferred our contract to the new business owner? Now, this is something that may happen in the lifetime of your strata management contract. You might have a manager who has decided to sell to a larger firm. You might have a manager who is retiring. And this question does come up. What happens when you've got a two year,

three year contract with your strata manager and they decide to sell to somebody else? How does that contract get transferred? How does that contract get assigned? Is often the legal word that's used. Does it come to an end? Do we have to enter into a new contract? And Ruth's question, because I've got a little bit more background that she put into my inbox, really goes to, don't we have a say in this? Don't we as owners need to consent to need to approve this new person coming into act as our strata manager? And the bit more background that Ruth gave me, she's letting me though that for a number of months now, nearly a year, their building seems to have been operating with this new manager in place where their contract is still with the old manager.

And there has been in Ruth's view, no legal transfer, no assignment, and certainly no consent sought from her building for this new manager to be in place. So what are the legal implications of this? What are the legal requirements? What should be done when a strata manager is selling their business, transferring their business, closing up shop, having somebody else come in and take on the portfolio,

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take on the buildings that they manage? What's the legal process that needs to be followed to make sure that that's all done correctly? So yes, I am gonna answer that one for you. If you're coming in and I can see lots of you here live, ready to settle in for some Friday afternoon strata knowledge, feel free to gimme a little hello here in the chat.

You're getting the side of the trampoline here in the background. I am sitting in the playground of a childcare center that is run by my mum, fellow female business owner. It's where I, I think I get my passion and drive for running a small business from, comes from my mom who has run this business. I'm sitting in here successfully for almost 30 years.

Margaret is here saying, happy Friday to you. Margaret, lovely to see you here, Margaret, thank you for the happy Friday. You are all there. If you're, you're being a bit shy today, you're hanging out waiting for this answer to Ruth's question. Oh, I can see you all coming in now. I think I might've been on the on the wrong screen here.

Sean's here saying, hi, Amanda, dare you to do Friday. Live on the trampoline. It came up, it wasn't me on the trampoline, it was my son and my husband said, you know, is it all right if Cal comes and jumps on the trampoline while you're doing live? And I said, it's fine. As long as he's not making any noise,

you could jump all he likes. Hey Anna, how are you? Shaun saying can't hear anything. I think that's at your and there, Sean, because I'm hopeful others can hear me. Silvestro is saying great questions. Hi Amanda, lovely to see you. Silvestro. Kristen is here. Looking forward to this afternoon's information. Sean is here. You've got captions.

Okay, great. Excellent. And the trampoline is looking good. Yep. Everybody loves good trampoline looks very safe. Very safe too with that net. That's what we need these days. Not like when we were kids, right? Okay. Ruth's question, what happens when we are, when a strata manager is selling their business to a new manager, what are the legal steps that need to be thought about,

that need to be followed? And if they're not followed, what are the implications? Well, as I always do when I get asked questions like this, and I think, hmm, I think I kind of know the answer here. I think we've been doing this for long enough, nearly 20 years now. I think I know what the answer here to Ruth's question is,

but I go searching in the legislation just to check that I have it right for you. And my attention has been drawn to an important section in our New South Wales Strata Schemes Management Act. It is section 51 in our Strata Schemes Management Act. And it is about exactly this situation, the transfer of functions of a strata managing agent. That's the title of the section.

We've got a link here for you that's going into Facebook, section 51 in the SS ma. And that section says that a strata manager can transfer their functions as a strata managing agent, but only if that transfer is authorized by resolution at a general meeting of the owners corporation. So you do need a resolution at a general meeting where you have a strata manager who's deciding during the term of your contract that they are selling their business,

they're selling their business to another legal entity, and somebody is going to carry on that business in another structure, under another company name, maybe even it's another business name. So it's a completely different legal entity. It is not the entity that you originally contracted with. There needs to be a resolution at a general meeting to approve that transfer of functions, ordinary resolution at a general meeting.

So the majority of those present and voting can approve this transfer. And if that happens, that resolution goes through, then Section 51 tells us that that new strata manager, the person to whom the functions are transferred, is taken to have been appointed as the strata managing agent and they carry on for the rest of the term of that contract. So you might have a three year contract with Strata Management Company A,

they then sell their business to Strata Management Company B in the second year of your contract. Strata Management, company B, as long as they have that ordinary resolution at a general meeting, can then carry on, carry out the remaining year of that contract.

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But you absolutely need that ordinary resolution that's in the legislation, that's in section 51. You'll find almost certainly that there is also a clause in your contract in your Strata manager's contract that sets out a similar process,

if not the same process for transferring or assigning the word assign might be used, assigning rights and obligations under the contract, transferring those to somebody else. Though there will be a provision in the contract that says how that should happen. It absolutely should have the owners corporation's consent and that consent should be given by an ordinary resolution. So if this has happened somehow,

and this was the impression I have to say that I was getting from Ruth's question, which I think is actually here on the page, you should be able to see all of it perhaps under this post or the post for the invitation for today's Ask Amanda. Now, the impression I was getting from Ruth's post is that there was a transfer to a new company,

and Ruth was quite clear when she posted this, that it was a new company with a different name and a different A BN. And I'm seeing your point there, Jan, Jan saying, what if the A BN stays the same? It's essentially the same business, then you're not contracting with anybody new. There is no transfer. So if that incoming purchaser has actually bought,

bought the whole business locks, dock a barrel, they've bought the business name, they've bought the contracts, everything under the, in the portfolio, they've bought everything, then they are stepping into the shoes of your existing strata manager and essentially becoming your existing or your previous strata manager. So there's no change in the contract. You're just gonna continue on the situation.

I think Ruth is talking about, and the situation where we do need to have this ordinary resolution is where you have a new legal entity that is now going to be running the business of the former manager who's taking on the portfolio, who is going to be carrying out the management functions, then you do need to have this ordinary resolution. Ruth is saying,

can it be assigned or an EGM resolution if we take action as NCAP first or ethics complaint to SCA? Okay, so we'll get into what if this didn't happen, where does this leave us? So yes, a resolution of the general meeting so that that can be at an EGM, it can be at an an EGM extraordinary general meeting or simply a general meeting that's not an A GM Ruth.

I think that's what you're asking there. And Sean's jumping in saying, Ruth, you can do both. Okay, If this hasn't happened and you've suddenly discovered, which I hope is the exception as the minority of situations where you discover, hang on a sec, another, it's a different company that's been carrying out management functions without our knowledge for this period of time.

And I think from Ruth's post, it's been quite a while, almost a year, and this has been discovered, there is then a real question mark over whether those functions, those tasks, those jobs, those things that the strata Manager, the new Strata manager has been doing for you, whether they have been properly authorized, whether that manager has been properly engaged and instructed and had the power to carry out those functions on behalf of your owners corporation.

Because without a contract in place, our legislation, both our strata legislation and our property and stock agents, our real estate agents legislation requires that there be an instrument of appointment, a contract in place to oversee, to govern all of those functions that are being carried out. So if there isn't a contract in place, then the money that has been paid to the strata manager can be called into question the hourly rates that they've been charging under that agreement.

They can be questioned as to whether they were reasonable or not. And it really opens a bit of a Pandora's box I have to say about looking back at these past transactions and seeing if any of them perhaps could be challenged and whether they things might have happened that are unauthorized. That's kind of worst case scenario in a building that perhaps has been really unhappy with things that have been happening the last 12 months might want to look back and unravel all of these things based on the fact that there's no valid contract in place.

However, if it went all the way through legal proceedings, it is quite likely that what the tribunal or the court would do would be to look at the actions that have been carried out by the strata manager. Look at the fact that they've been carried out under instructions by the owners corporation query the fact that the owners corporation thought they were instructing somebody else,

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but they were given instructions to do certain things. They did those things. Those things were of value to the owners corporation. They needed somebody to send levy notices, they needed somebody to convene meetings, they needed somebody to send trades people out. Those things were of value and there is valuable, there is an amount of money that should be paid to that strata manager for the work that of value that they have done.

So that's where we start applying what we as lawyers call Common Law principles. So we step away from the strict requirements of the legislation and we apply these common law principles to make sure that somebody who has done work that is valuable does get paid a reasonable amount for that work, but it might not be the hourly rates that are in the contract. So it is a messy situation.

Ruth, I'm just going back. Thank you for being here. By the way, Ruth, and jumping in, I'm just going back to some of your questions. You said ethics complaint to SCA? Absolutely. That's, that's open to you if you go to the Strata Communities Association website in your state. I think Ruth, I'm assuming I have assumed that you're in New South Wales.

There is a section there where you can make a complaint if either or both of these managers are members of SCA. If you were going to challenge the validity of the contract or the actions of the Strata manager, you could start doing that through Fair Trading is the regulator of our strata managers and their licenses. The contract itself, it's not clear whether you in fact have one,

whether you have one with that new strata manager or not. So I'm thinking about whether you would challenge that in NCAT under our, the relevant section of our Strata Schemes Management Act where you can challenge contracts with strata managers. It is certainly the type of complex situation that you wanna be getting legal advice on. Definitely so often I bring to our Ask Amanda now sessions some straightforward,

commonly asked, commonly experienced questions and challenges. This one's a little bit different. This one, I think some of you'll absolutely come across in your time in strata. Others of you will never see this happen. And for that reason it is the kind of situation that very much Ruth, your community should be getting discreet, dedicated, legal advice on if you are wanting to take action in this situation.

Ruth says it's been six months, I feel the new Strata manager is planning to stand firm until the Ag GM in July can they legally manage our affairs and take agency fees without proper transfer. The strict answer to that is no. And the legislation says that no they can't. And I've spoken Ruth about how even though the legislation says no they can't, if they were sued or if the Strata manager decided,

if the owners corporation decided to stop paying them and they then sued the owners corporation, there would still be some legal arguments around how they might get paid. But strictly, yep, shouldn't be operating without a valid agency agreement in place. Edward, is he saying good afternoon, can the strata manager sell the contract without the lot owners having a say in the contract before it is sold on?

So Edward, you might have jumped in after a little bit later where I pointed out Section 51 of our Strata Schemes Management Act in New South Wales, which does say that a resolution of the general meeting is required before there can be a transfer of functions from one Strata manager to another. And as we're seeing the terms of the contract, well, I would be hoping that the terms of the new contract with the new manager are tabled at that meeting.

All owners have had a chance to have a look at it and if they're not happy with it, then they wouldn't be voting in favor of that motion and that ordinary resolution wouldn't be achieved if a majority of those present at the meeting did not vote in favor. It is only an ordinary resolution that kind of makes sense because it is only an ordinary resolution to appoint a strata manager in the first place.

So transferring to somebody new makes sense to be able to do that by ordinary resolution. But definitely the legislation is only one place to look. The strata managers who are engaging in this business transaction, who are looking at all the boxes that they need to tick to make sure that they can legally transfer their contracts, you need to look at the terms of your actual contract as well.

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And they'll certainly, almost certainly absolutely should be a clause in there that deals with transfers and assignments of this nature. Ruth is saying, thank you. I'm glad you found that helpful. Ruth LA is saying you need to pay \$250 outrageous. I'm wondering if that's in your contracts later that if there's a transfer, there needs to be a payment by the owners corporation.

Interesting. RU says SCA says, I can complain, but only with strata committee signing the complaint form, which I don't think they will do. Great point, Ruth, thank you for raising that. The reason why it has to be your owners corporation making the complaint via your strata committee is because they are the ones who are the party to the contract.

This is a contract between the strata manager and the owner's corporation, both the past contract and the the dodgy new contract or whatever it is, the potentially invalid contract. The two parties to the dispute are the owners corporation and the Strata Manager, not you as a lot owner. So no, you won't have standing to challenge this in your own name as a lot owner you do.

It is something that you do have to have your strata committee leading the charge on. Sean says SCA will only be able to field complaints against SCA members if the complainant has undertaken the members' complaints handling process first. Excellent. Thanks for drawing our attention to that. Sean and I do think the best first place to start is looking at SCAs website there and I have a link that you click or or an email I think you can write to about complaints and I'm sure you'll get the guidance that you need.

All right, Sean's offering people to DM him. Excellent. Thank you for your support there. Sean. Ed's asking, would that be a committee meeting or, or a general meeting? Absolutely. A general meeting required by our legislation, Edward, to be able to approve the transfer of functions of a Strata manager. Alright. Those comments are getting a little bit complex for me.

I think there's some back and forth conversations going on there. The question that has been asked today and that I have answered has been Ruth's question, our strata manager recently sold their business. How do we know if they have legally transferred our contract to the new business owner? Hopefully that's been helpful for you. Ruth. As I said earlier, complex question.

There's a few layers in this one. I have given you the very high level outline there, which may be helpful for others who end up in a similar situation. Absolutely do get some legal advice on that if it's something that you or your community do want to take further. I have enjoyed being out here in the playground of the childcare center that is operated by my hardworking mom.

No kids here today. Childcare Center is closed. Always good to be somewhere different. The Traveling Strata Lawyer. We can talk Strata Law anywhere, anytime. Thank you very much for joining me, everybody. That is it for our Ask Amanda. Now, that's our one question answered here today. If you did ask a question here on the page, send it to my inbox.

If you have followed up saying, Amanda, I asked a question and you didn't answer it, I get a lot of those. I get a lot of those emails. The best place for you to go to make sure you can ask me a question anytime you can get my answer direct from me to you in writing, answering your question about any particular area of strata law.

The place where that is happening every day is inside the Your Strata Property Online Membership community. If you have heard about membership or you thought, what is this membership shebang, what's going on here? I'm interested in finding out more about membership and asking Amanda questions at 2:00 AM asking Amanda 25 strata questions in a row. You can do it head over to strata.membership.com.

You'll find out all about membership there and be able to get immediate access to this unlimited opportunity to ask me your strata law questions and to have them answered for you. Alright, thank you very much everybody for joining us. I will head over and just have a look at some of those comments that I haven't got to. I'll do that a little bit later today.

I'm gonna wrap up. Have a fabulous weekend in Strata and I'll catch you all next time. Bye for now.