

Ask Amanda Now: 8 March 2024

In today's "Ask Amanda Now" session, Amanda answered Vivienne's question about a committee member who is short-term letting: does this member have a conflict of interest when the subject comes up at committee meetings and can they be excluded from the discussion?



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Hello and welcome to Ask Amanda. Now I am Strata lawyer, Amanda Farmer. We are heading out live to the Your Strata Property Facebook page. We're going out to LinkedIn, we're going out to YouTube and we are today coming to you live from the Four Seasons Hotel in Sydney. This is where I have spent the last three days attending the 19th Annual Conference of the Australian College of Strata Lawyers.

You might have seen a couple of insights from the conference shared on the Facebook page on my LinkedIn earlier this week. It's been a fantastic conference. We have just wrapped up. Everyone is overloaded, exhausted feeling that we have been able to to share, to learn to understand all of the current need to know that is going on in our strata law space.

It's a busy place here right now at the Four Seasons. There's a few other things going on. Some of you may know Strata Community Association. New South Wales is hosting an International Women's Day afternoon tea for all of the women in our strata space right here in the hotel where I am. And I have a feeling looking at the time that might be about wrapping up.

So on that note, happy International Women's Day to all of the women out there and to everyone who supports us. I hope you found a way to celebrate today maybe being right here for our live Ask Amanda. Now session is the way that you are celebrating, which is great. Sean McNamara is here. Good afternoon to you Sean. If you're coming in live,

I can see a few eyes there coming in live. Feel free to shoot me a hello here and a happy International Women's Day to you and the women in your life. Sean Darl is saying, good afternoon, good to have you here. Darl, if you're catching the replay, I would love for you to drop us a hello here as well. Now I've announced this as an Ask Amanda now session today.

That means that it's a short session. I'm popping in, I'm popping in between commitments, social commitments. I'm going to say at the moment, just wrapped up our three days with the College of Strata Lawyers and I'm going to go and relax and celebrate with a few of my colleagues. But I said gotta be on our Ask Amanda now session answering one strata question before we head off into our weekend.

Hey Chris, I see you there. Welcome. And that is what we are going to do. Put, I put the call out earlier today on email, on the Facebook page, on LinkedIn as well. Do you have a strata question that I can answer for you? Strata law question is generally what I'm looking for. A question that I can help you with.

I always get lots of questions and we spend a bit of time looking through them and we choose one that we think is going to help the most number of people, one that is reasonably general in nature that might be affecting you in your community. If you're a manager, it might be something that you've come across before. Pauline is here saying, hi,

welcome Pauline and Vivian is here. Good to see you Vivian. On that note, our question today, it's from Vivian. It's coming up onto the screen here. Really great question from a couple of different angles. Vivian's asking or letting us know that her community is considering a bylaw to prevent short term letting. Can a committee member who is Airbnb currently engaging in short term letting can a committee member who is doing that be excluded from the discussion about this at a committee meeting?

Now, great question. I've said from a couple of angles, you're talking about a bylaw to prevent short-term letting. I can speak a little bit to that. And you're also talking about whether a committee member who seems to have an interest in this topic maybe has a conflict of interest in this topic if they want to continue short-term letting and you are talking about preventing it,

can they be part of the discussion? Can they vote on this issue if there is a motion at a committee meeting to discuss to further consider to get a bylaw drafted perhaps if you're talking about this at committee meeting. So great question from Vivian and that is the one that I'm planning to answer here today. So a bylaw to prevent short-term letting, that is something that we can do in New South Wales.

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Our legislation allows our owners corporations to make a bylaw that prevents someone from engaging in short-term letting. But you can only do that where the person who is short-term letting is not an owner occupier, they're an investor. The apartment is not their principal place of residence and that's the language that's used in our leg legislation. You can prevent those types of people from short-term living.

If someone's an owner occupier, then they're just on holidays for a few weeks or they want to rent out a let on Airbnb, a room in their apartment while they're there. So they're hosting the short-term letting that's allowed. And you can't prevent that in New South Wales, but you can prevent what I summarize as investor owners, people whose apartment is not their principal place of residence, you can pass a bylaw that prevents them from short-term letting. So it sounds like that's what Vivian's community is planning to do. Looking at one of these bylaws a little bit more information was in the note that Vivian dropped to me with this question. The there is a discussion that's going to come up at committee as to whether or not there should be a bylaw drafted.

Do we engage a lawyer to help us draft this bylaw? Is this a direction we wanna go in? What I wanna be clear about, and I think Vivian's aware of this, is that the committee can't make the decision to make the bylaw that has to happen at a general meeting, but definitely in an organized transparent community, it's perfectly understandable and helpful I think for the committee to be discussing these issues or this issue before it goes to the general meeting and before further time and perhaps further money is spent on the drafting of the bylaws spent on engaging a lawyer.

This is something that the committee should be discussing. So what do you do when you have a committee member who is short term letting and probably doesn't want this bylaw to be passed, let's say Vivian's here and she is posting a note here that says, yes, I believe that this is a conflict. So sounding like this committee member is not gonna be on the same page with others who may want this bylaw to be prepared.

So can we stop them being part of the discussion and from voting on the issue? Well, in New South Wales, a committee member who has a pecuniary interest, that's the wording in our legislation, a pecuniary interest. And if you look up that word, it means a financial interest in a matter that's going to be discussed at a committee meeting. And if that interest appears to raise a conflict of interest,

then that committee member has to disclose that they have a pecuniary interest and that they may have a conflict of interest. They have to disclose that they have to say at the committee meeting to the other committee members, Hey, you're talking about banning short-term letting, you're talking about looking into a by-law about short-term, letting I actually make some money outta short-term letting in this building.

And I think I should be part of this discussion because I have a conflict and I don't think I will be able to perform my duty as a committee member if I'm part of this discussion. I'm wearing two hats here. So that committee member has to, that's the legislation has to disclose this pecuniary interest that may give rise to a conflict. And when that disclosure is made,

they cannot be part of the discussion and they cannot vote on the issue. So that aspect of our legislation is actually new. This is part of our reforms that came in in December, 2023, this mandatory requirement for that committee member to be excluded from the discussion and not permitted to vote on the issue that started in December, 2023. Prior to that it was up to the committee to decide whether the conflicted committee member should be part of the discussion or not.

There was a discretion there that even though they, they disclosed, we're still going to let them be part of the discussion. No longer any discretion our legislation says they've disclosed that conflict, then they cannot be part of that discussion. Now I've mentioned the legislation a few times where it is, is clause 18 in schedule two to our Strata Schemes Management Act.

If a member of a strata committee has a direct or indirect is the wording in the clause pecuniary interest? I've told you financial interest in a matter that is being considered or about to be considered at a committee meeting. This is only at committee meetings only for committee members. And if that interest, if that financial interest appears to raise a conflict with the proper performance of the member's duties,

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then that committee member must as soon as possible disclose their interest. And if they've disclosed that interest, then they cannot be present during any discussion about the issue, any deliberation on the issue about that particular matter. And they cannot take part in any decision making that the committee is doing about that particular matter. So that's the long way of answering your question,

Vivian, which yes, I'm a member of a committee who is short term letting, should be disclosing that fact that they have an interest in a pecuniary interest, have a financial interest in this issue that's going to be discussed if you're talking about passing a bylaw that would prevent short-term lending. I think that's a, a pretty good example of a financial interest that has the potential to raise a conflict with the member's performance of their duties.

Hopefully that's helpful. If you still hear Vivian, let me know in how that one lands with you. A couple more of you coming in and saying, hi, Sean is here, Muskan is here. Leoni is here. Lovely to see you. I am just popping in quickly. It's 10 minutes today To answer that question for Vivian. If you sent me a question and you didn't get an answer,

didn't get chosen today. We get lots and lots of questions and often we get lots of good questions there. A few good ones in there today, which I would've loved to answer. The place to be getting answers to your strata questions is inside the Your Strata Property online membership community. That's the place where our Q and A forum is. We've been running that forum for almost eight years now.

Lots of strata questions, lots of strata answers there for you to read, to search for, and to ask for yourselves. I was in there earlier today answering questions that are there from our members and I'd love for you to pop your question in there as well. If you wanna find out more and to join us inside the membership, the place to go is strata.membership.com.

Lots of information over there for you to access. Shannon is here saying Hi. Hey Shannon, nice to see you. Vivian's saying, I did find it in the New Amendment. Sorry, I should have mentioned the clause. I'm of the same understanding as you. We just scroll back up, but others disagree with me. Well, it's pretty straightforward.

I would've thought in that situation, Vivian, that you described perhaps sharing that clause and it has been amended, as I said, and as you've picked up recently sharing clause 18, schedule two to the Stratas News Management Act might be helpful. Luke is here. Hey Luke Luke's saying, but the bylaw will be general meeting and then there's no pecuniary interest requirements.

Yeah, exactly. So earlier I said to just be clear, committee member can't make the bylaw preventing short-term, letting general meeting has to make that bylaw an excellent point. Luke, at that time, the committee member who was otherwise conflicted and couldn't vote at committee meeting level can vote for or against the bylaw at general meeting level, but they just can't be part of the discussion.

I believe beforehand, if there's discussion going on in the committee as to what the bylaw might say, you can imagine how where there's different interests at play, the discussion might get derailed or the discussion might not quite happen or might not happen in an open way at committee meeting level. If there's someone there who has an interest, that may be contrary to the majority of other owners in the building.

But yep, the general meeting will speak and the general meeting will decide whether that bylaw should be passed or not and that conflicted committee member can vote at that time. Thanks for pointing that out. Luke. David is here saying Hi. Hey Emiliana. Hey Michelle. Good to see you. Colin is here and asking what if the interest is not pecuniary?

For example, discussion on issues with the developer or builder and one of the relatives is on the committee. Yeah, so pecuniary interest are the words used in the schedule. So there does have to be some financial impact. I think you might find that most situations where there is a potential conflict come down to being pecuniary interest. Colin, you've used an example there where a relative is on the committee.

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You're talking about developer builder. Why would we be concerned about that if that relative is part of a family that may be impacted by decisions that are made in the building in a financial way. I think most situations we can generally bring back to there being pecuniary interests. So I'll leave that one there for you to have a think about. Vivian saying thank you so much.

Thank you for your excellent question, Vivian. I'm gonna wrap up and head off on a Friday. Thank you all for being here. Even though we're a little bit later than usual, I've said that I'm at the Four Seasons in Sydney. Lots of strata stuff going on here today. I've been attending the Lawyers Conference. I think the Women's International Women's Day Afternoon Tea has just come out. Things are just getting a little bit louder around here. Have a lovely weekend in strata and I'll look forward to catching up with you all next week. Bye for now.