

Publication Date: 7 March 2024

YSP Podcast Transcript: 399. Meeting minutes: how detailed should they be?

Listen to this podcast episode [here](#).

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, and I'm here each week helping you to better understand, to get our handle on, to deal with, to get through this life that is strata. Welcome.

This week I am sharing with you my thoughts, and some recent learnings on a topic that I haven't spoken about on this podcast before, which is saying something. We are about to celebrate eight years of the podcast. So the fact that I haven't really touched on this topic, maybe it's been mentioned in passing, but we certainly haven't done a deep dive is surprising to me, but here we are. Today we're going to talk about the minutes of strata meetings. Some of you rubbing your hands together, getting excited. Yes, let's talk about minutes.

Specifically how detailed do our meeting minutes have to be? How detailed should they be? What does our law say about meeting minutes? All that here today. But first, a little bit of background that I know you will find just as fascinating as I have. Some of you know, a few weeks ago, I was over in the United States attending the annual law seminar for the Community Associations Institute. That's the US equivalent of our Strata Community Association. They host an annual law conference for their College of Community Association Lawyers. I was over there representing the Australian college. It all happened in Las Vegas and it was a fabulous conference. There were almost 750 people attending that conference the numbers over there.

I'm just mind-blowing because it is a conference that is so large it's a bit different to the way that we might host our conferences here in Australia. In the middle of the day, there are separate sessions. So you can choose which session you might take yourself off to and learn a bit more about a particular topic. It does make it hard because there is so much gold to gather and lots of great sessions going on.

But one of the sessions that I knew I did not want to miss was a session delivered by a lawyer from North Carolina. His name is Jim Slaughter. He's been around in the community association circles for some time. He's described on his LinkedIn profile as an attorney and a professional parliamentarian. He's a regular speaker on community association issues. He's one of the former presidents of the College of Community Association Lawyers. And part of what I want to share with you today is some of my learnings from sitting in on Jim Slaughter's conference session.

Now I've mentioned there that Jim is a professional parliamentarian. What is that? That doesn't mean that he's a politician, doesn't mean that he's an elected representative who sits in Parliament. A parliamentarian is apparently an expert in interpreting and applying the rules of order for meetings of deliberative assemblies. What is a deliberative assembly? Well, my quick googling tells me that you have a deliberative assembly when you have a group of people meeting to discuss and make decisions on behalf of a larger membership.

So Jim Slaughter is an expert in interpreting and applying the rules of order for meetings of community associations and other institutions, other organizations where he's hired to advise on those rules of order. And we need rules of order. I think you'll agree. I don't think I need to do too much convincing there. We need rules of order at our meetings so that our groups, whatever they are, whether they are strata committees, whether they are owners in general meetings so that they can fairly discuss and determine what they're going to do.

Now a parliamentarian, to be clear, is not a chairperson. The chair is the one who has the power to rule on questions of order at a meeting and ultimately decide the proper application of the rules. The role of the parliamentarian, if this is a larger organization, a large community association in the U.S., the parliamentarian is simply going to advise and be there to consult with if there's a need to clarify, to respond to any points of order and any questions about the procedure that might be coming from the floor.

YSP Podcast Transcript: 399. Meeting minutes: how detailed should they be?

So in short, Jim Slaughter knows a lot about proper procedures for the running of meetings, meetings of all types. But for many years, he's been involved in educating and assisting community associations and the professionals, the lawyers, and the managers who work with them.

Now, the session that I attended delivered by Jim was titled "Robert's Rules Rock", Parliamentary Procedure Survival Skills for Attorneys immediately got my attention. I knew a little bit about Jim's work. I knew that his session would be about meetings and meeting procedures.

And this phrase, Robert's Rules. This is one that maybe you might have heard before. It's one that I certainly had heard before. He's referring there to Robert's Rules of Order. Now this is a book of rules for meeting procedures written first in 1876 by a man called Henry Martin Roberts.

Now when you look him up, you'll find that Henry Martin Robert was an engineering officer in the army. And the story goes that one day he was asked without too much preparation to preside over a public meeting that was being held in a church in his local town. And he realized that he didn't know how to do that.

He tried his best. He was very embarrassed, and made some mistakes. Might be sounding familiar to some of you. And he decided that he would never preside over another meeting until he knew something of parliamentary law and parliamentary procedure. So he looked for and read a few books that were available at that time on the subject. He travelled a lot because of his military duties. And whenever he traveled, he checked out, what other deliberative assemblies were doing, how they were running their meetings. And he saw that most people were just as confused as he had been.

Each leader in each different country had a different idea about the correct meeting procedure and he decided it was his job to bring order out of chaos. He wrote the first edition of Robert's Rules of Order. That book is now in its 12th edition and it is the most used authority on the rules of parliamentary procedure. It's not the only one, but it's definitely the most popular. And I'm sure many of you have heard of Robert's Rules of Order.

Now I'm hopeful that you can see how rules of order might be helpful to those who are leading, who are advising strata communities in the United States. They call them condos or homeowner associations, community associations is also a popular term.

Yes, a well-run meeting can help to avoid or lower the risk of litigation. That's often where lawyers are coming from, encouraging their clients to ensure their meetings are run in accordance with the law and as smoothly as possible but from a more practical, perhaps more day-to-day perspective when we apply proper procedure to our meetings, we can turn those long, conflict-ridden, confrontational meetings into short, painless ones.

We can maintain, if not restore, a sense of community. We can fit in more productive decision-making motions and action items that go to improving the community, not just putting out fires and solving existing problems. There's a lot to be said for getting our meetings right. And that's also the reason why I really believe that strata lawyers, strata managers, and absolutely our committee members should try to spend a little bit of time learning about the basics of meeting procedure. Even looking at books like Robert's Rules of Order and understanding a bit about more formal parliamentary procedure. You will find as I'm going to discuss that there's not a lot in our legislation about meeting procedures and how exactly our meetings should run.

So there are quite a few gaps there left for us to fill in, in a way that we think is appropriate, in a way that we think is reasonable and productive. And I think Robert's rules and those rules of parliamentary procedure can be a really great guide when you need to or you're trying to, you want to fill in those gaps.

YSP Podcast Transcript: 399. Meeting minutes: how detailed should they be?

I'm often attending meetings, general meetings of owners corporations, and community associations. I'm appointed as a proxy holder for lot owner clients. In the past, I've been engaged by owners corporations as a professional chair. To be there to run a meeting that is expected to be a little contentious. The Strata Committee wants to have someone impartial, someone professional there leading the meeting to make sure that it all runs smoothly. So being on top of meeting procedure is something that I make a point of.

Robert's Rules of Order itself is quite a big, thick book. It has sections on effective presiding over meetings, drafting good minutes, which is where we're heading today. The duties of office bearers running elections, holding board meetings or committee meetings, and handling troublesome members when I was at the conference, I purchased Jim Slaughter's Fast Track to Robert's Rules of Order, a much shorter book. I'll make sure that they link to both the current edition of Robert's Rules of Order and Jim's Fast Track guide in the show notes for this episode. You'll find that over on our website.

Now, while I have always known, I think in my strata law experience of the existence of Robert's rules, I hadn't realized until I heard Jim Slaughter share it in the session that Robert's rules have actually been adopted by many communities in the United States, whether in their by-laws or in the state statute. In some states, there is actually legislation made that require community associations, condos to apply and follow Robert's rules when conducting their association or their board meetings. So that means that these communities have found a way or they are required by their state laws to make Robert's Rules of Order binding on them. And if there's a breach, if there is some part of that parliamentary procedure that is not followed when it comes to a meeting then someone can sue and be sued for breach of the law.

Hawaii was one of the examples given by Jim, the Hawaiian statute provides that all association and board of directors meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order. That's in the state legislation governing community and condominium associations. Similar language is found in North Carolina. That statute says, "Except as otherwise provided in the by-laws, meetings of the association and the board shall be conducted in accordance with the most recent edition of Robert's Rules of Order". I mention this because I'm wondering if some of you might want to think about incorporating something similar into your by-laws.

Now these rules, these by-laws that I've just read out for Hawaii and for North Carolina remain subject to anything different or contrary that might be in the law and that should always be the case. Your by-laws can't override or take precedence over the legislation. but where there might be these gaps that I mentioned earlier, where our legislation and New South Wales is in this boat is not very clear or very detailed about meeting procedure, about minute taking, about points of order, how to deal with troublesome members. None of that's in the legislation, but these are things that come up time and again at general meetings, sometimes in committee meetings. Could you have a by-law to fall back on? That expressly provides that meetings are to be conducted in accordance with recognised rules of parliamentary procedure. Robert's Rules of Order being the most widely recognised. Have a think about it. But if you've got that backing in your by-laws, I can see how that would be helpful to those who are chairing meetings, who are advising and who are assisting our owners corporations and our strata committees.

So there's so much that you can learn about meeting procedure by having a look at Robert's Rules of Order and taking a deeper dive into Jim Slaughter's teaching. But today I've promised you that we're going to talk about minutes. The minutes of meetings, whether they are general meetings, strata committee meetings. Minutes are pretty important. Once they are approved, and that usually happens at the meeting following, they are the official record of actions taken decisions made by the corporation. Minutes are relied on in legal proceedings. Absolutely bundles and bundles of documents we're filing in the tribunal for our clients. A large component of those bundles is usually minutes of meetings proving that a decision was made, proving that a decision was not made, that a motion was defeated, that an owners corporation decided not to approve that quote to repair the common property. The minutes are the official record of the actions taken and the decisions made. And they are a historical record. Minutebooks absolutely should not be disposed of. They should be kept for as long as possible. Minutes going back 10 years, 15 years, 25 years can be relevant to a community trying to work out what decisions might have been made to bring them to their current situation.

YSP Podcast Transcript: 399. Meeting minutes: how detailed should they be?

Now because minutes are so important and many of you will have experienced this, there can be a lot of discussion, a lot of debate, disputes about what goes in the minutes. How detailed do they need to be? what should be recorded and perhaps more importantly, what should be left out. Now if you are applying Robert's rules, or simply Roberts as Jim referred to them in his session. When it comes to minutes, this is what Roberts says. "Minutes are a record of what was done at a meeting, not what was said."

Now that's super important. I'm going to say it again. Minutes are a record of what was done at a meeting, not what was said. Some of you may not agree with that. And I'm gonna try and address that. But in Jim Slaughter's teaching, when he was talking about minutes, according to Roberts, he said, if your minutes use the word said when describing a debate, they have too much information.

For example, Maria said, "I don't like the service that the strata manager has been provided, so I don't think they should be reappointed." If that's in your minutes, according to Roberts, that's too much information. There is no need, said Jim, to summarize the debate. Once a meeting ends, no one should care what the members said. We don't need to know how they felt. We don't need to know that they were upset. We don't need to know who disagreed and why. We just need to know what the motion was, whether it was amended, whether it passed or failed. That is what needs to be recorded in the minutes of meetings.

There might be transcripts of meetings. Many meetings are now being recorded, especially those that are being held online. If there is a transcript of a meeting, the transcript is not the minutes. It is a transcript. Some committees, some secretaries, some strata managers might want a transcript to assist them in properly recording the minutes. That's okay, says Jim, you can have a transcript. But if that transcript is made simply for the purpose of making sure the minutes are done accurately, then maybe the transcript should be destroyed once the minutes are done. So there's no confusion about what the official record is. That's what Jim Slaughter says.

I think if we are applying our New South Wales law in particular about records and record keeping of the owners corporation. You might want to think twice if you're a Strata manager before you destroy a record that has been created on behalf of the owners corporation. But I think a transcript certainly could be created for that sole purpose of preparing the minutes on the basis everyone agrees that would then be destroyed once the minutes become the official record.

Minutes are short says Jim, they are to the point. They are an account of the business transacted at the meeting so that any reader of the minutes can quickly determine what was done, what was decided, not what was said. No one needs to know that once the meeting is over. So that's a very high-level overview of what Roberts says about minutes.

What does the legislation say about minutes of our strata meetings as a New South Wales lawyer? That's what I look at the New South Wales legislation. Schedule 1 of the Strata Schemes Management Act 2015 deals with meeting procedures for general meetings and in clause 22 we touch on minutes and clause 22 tells us that an owners corporation must keep full and accurate minutes of its meetings that include minutes of all motions passed at the meeting.

Now focus on those words, full and accurate minutes. We head over to schedule 2 to the Strata Schemes Management Act when we're talking about strata committee meetings and the minutes of those meetings. Clause 17 in schedule two tells us that a strata committee, tells us that a strata committee must cause to be kept a record of its decisions and full and accurate minutes of its meetings. Again, we see those words, full and accurate minutes. Interestingly, in schedule two, when we're looking at strata committee meetings, we've also got those words, "a record of its decisions". Now, the reason I think that's there is because our strata committees can actually make decisions by written vote that is a vote outside of a meeting.

There is still a procedure that needs to be followed there. It's in clause nine of schedule two, but our committee members have always been able to cast written votes outside of formally convened committee meetings. And I think that's why those words, a record of its decisions and full and accurate minutes of meetings are used in clause 17 of schedule two.

YSP Podcast Transcript: 399. Meeting minutes: how detailed should they be?

But do we think that Robert's rules, which tell us minutes are a record of what was done, not what was said, would lead us to comply with the New South Wales law is a record of what was done and not what was said full and accurate minutes of a meeting? Or is something more than simply the motion was resolved, the motion was not resolved, needed in our minutes? Well, as far as I'm aware, we don't have any tribunal or court guidance on this particular question. There will be some of you out there who will be able to tell me if I'm wrong, I know. Feel free to send those cases over if I've missed them.

What there has been is quite a bit of discussion in the corporate world more broadly, including relevant cases on the duty, the obligation of boards in particular to minutes of their meetings and this very discussion came up in the Q & A forum inside our online membership community a few years ago now. The question was raised, "How detailed do minutes of meetings need to be?" My position even at that time was pretty much in line with the Roberts guidance and Jim Slaughter's guidance. Minutes are a record of what was done, not what was said. If your motions are properly crafted then your minutes simply list the motion and market is resolved or not resolved. I was challenged in that view by a member in the forum. I know that member is a listener to the podcast and I will protect their identity, but I know they know who they are and I do thank them for this valuable contribution in challenging me on this view.

The member drew my attention to the James Hardy litigation, High Court litigation in about 2012. This may have been the start, says our member, of a rethink on the content of minutes and the accuracy of the James Hardy minutes was one of the issues in those proceedings with a few conclusions drawn and principles established in that case. A bit later, in 2019, a Royal Commission into misconduct in the banking and financial services industry. The report tabled in parliament had a close look at the content or lack of content of board meeting minutes.

And apparently as a result of these kinds of cases, the Australian Institute of Company Directors and the Governance Institute of Australia issued a joint report on minute-taking practices. That report is dated August 2019. There's a link to it in the show notes for this episode. If you want to go and check it out.

But a key part of the report said this, it is advisable to include the key points of discussion and the broad reasons for decisions in the minutes. This may help to establish that directors have exercised their powers and discharged their duties to act with care and diligence and in good faith for a proper purpose and in the best interest of the company. If judgement is required and directors are balancing a number of competing risks and considerations in their decision-making, it is prudent to actively consider whether the minutes capture them adequately but succinctly.

So in sharing this really valuable information with us in the forum, this member said, while strata schemes are not bound by the legal requirements of the corporate world, in my view, all of the above principles establish best practice in the drafting of minutes that well-managed schemes, those that value transparency, communication, record keeping, corporate memory should adopt.

So I've shared what Jim Slaughter thinks when applying Robert's Rules of Order to the keeping of meeting minutes. I've told you what one of the members in our Q & A forum has shared, what do I think? Some of you might be tuning in because you wanna know what I think from time to time.

Well, my inclination remains that unless you have something different required by your by-laws, your rules, or your state legislation. Keeping it simple in your meeting minutes should be the rule of thumb. And Roberts's point, that minutes are a record of what was done, not what was said is a really great starting point. It is the case that our owners corporations, our body corporates are excluded from the strict, the owner's requirements of our corporations act. They are not. James Hardy. Their strata committee members do not carry the same burdens, the same level of obligation that directors of publicly listed companies carry. I think there is a difference there. In my experience, our communities, our Strata managers sometimes can be frozen by this belief, this wish to record everything in the minutes to make sure that everybody's opinion has been taken into account and it can mean that minutes take too long to be distributed.

Publication Date: 7 March 2024

YSP Podcast Transcript: 399. Meeting minutes: how detailed should they be?

Minutes ultimately come out nonsensical. It's unclear whether or not the motion was in fact resolved. It can be a real source of conflict and dispute where one person may say that their view should be recorded in the minutes and another says, no, that's not the way that we do things around here. I think you can and you do still comply with your legal obligation under the New South Wales legislation to keep full and accurate minutes when you are recording in the minutes, the attendances, those who are eligible to vote, your quorum, each motion.

Whether there were any amendments to the motion put, what the amended motion ultimately was, who was in favour of the motion, who was against and who abstained, especially when the motion requires a special resolution or a poll is called and the result must be calculated on a unit entitlement basis. Those are situations where it is essential, I say, to be recording the unit entitlements for and against the motion. I think if you're doing that without saying what those present at the meeting said about the topic, what the debate was. I think you are keeping full and accurate minutes of meetings.

I don't think in my 20 years that I've been involved in a case where it was said to be unfortunate that the minutes didn't have more detail or preferable that the minutes should have had more detail. I've certainly been involved in lots of cases where it wasn't clear from the minutes whether a decision was made or not. If we're going to put our focus on better minute-keeping I suggest that we put our focus on that really simple exercise of recording what was done at the meeting and not getting distracted by what was said.

Links to all of those resources that I have mentioned, including schedule one and schedule two of the New South Wales legislation are in our show notes for this episode. My thanks to Jim Slaughter for his excellent session at the conference. I was also lucky enough to be introduced to him in person as he was buzzing around the conference. Jim is the kind of guy who buzzes. One final point that Jim made that I do want to share with you, perhaps triggering another discussion for a later podcast episode. Jim said that offices of boards by which he means office bearers, the chair, the secretary, the treasurer, office bearers set the tone both in and out of meetings. I really love that and I had cause to reflect on it just within the last 24 hours as I was spending some time with a member of our online community inside a member call that member was sharing with me some pretty poor behaviour on the part of some committee members, not in meeting, outside of meeting. A reminder that if you are a committee member, if you are an office bearer, you are elected to that position by your fellow owners, by your fellow committee members in the case of office bearers and as such you're in a leadership role.

And you're in that role not only when you are within the confines of a formal meeting but also for the duration of your term, when you're in the building, when you're on the common property, when you're communicating with the strata manager, communicating with your fellow committee members, fellow owners. Others are looking to you and the way that you conduct yourself and lead the community as setting the standard. And that's the standard that's set both in and out of meetings.

Topic for another day, perhaps, but that is what I wanted to share with you today about the minutes of meetings, introducing some of you, perhaps if you hadn't come across it before, to the parliamentary procedure for our meetings. So many aspects of that that I feel can be useful to us. Thanks for spending some time with me. I'll look forward to catching up with you next time. Bye for now.

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 yourstrataproperty.com.au.