

Publication Date: 14 March 2024

YSP Podcast Transcript: 400. Can an owner force their building to make an insurance claim?

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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. I'm Amanda Farmer and I have with me today Reena Van Aalst from Strata Central. Hi there Reena.

Reena Van Aalst: Hi Amanda, how are you?

Amanda Farmer: I'm doing great. I am part of the way through another busy week in strata and it's nice to take a break and chat with you.

Reena Van Aalst: Yes, likewise.

Amanda Farmer: Let's start here. Hit me up with your challenge for this week, Reena. Well, this challenge, Amanda has actually occurred now in, I think on three different buildings with three variations of the same issue, whereby there is a leak that's been caused by a burst flexi hose, which we know is contained within the apartment. Another one had a dishwasher hose that's leaked. No, two of them, sorry, were both flexi hoses and one was a dishwasher leak.

And what happened in one of the scenarios in the scheme was the floorboards that owner were damaged and unfortunately those floorboards were installed by the lot owner. There was carpet originally. And initially we submitted a claim and it was rejected in there. After that the claim was reopened for some reason by the insurance company and they said, "Yes, no, we can pay the floorboard repair. The insurance broker has accepted the claim."

However, the excess during the period that it occurred was \$10,000, so therefore the \$10,000 would would've to be paid. So the committee then came to me to seek my advice and I mean this has been happening I think with many schemes, if you have too many of these, they actually impose a condition that you had them on inspected because even though it's a lot owner issue, some owners corporations will make the lot owner pay. However, some people have done a renovation and they've updated it. So it's sort of, and some buildings will say, "Now we'll look at every single one and we'll repair them because everyone's sort of paying through their levies anyway."

So there's different thoughts about how to address this, but, and the pressure is coming from insurance companies about this risk that's causing a lot of damage. So anyway, so the committee asked me and I thought, well we don't own the floorboards. They were installed by the owner and also the cause of the water leak was a burst flexi hose, which is not common property, it's within the lot. So we went to the owner and we said, "Well, you know, these are the facts, we want you to pay the excess." And then she refused. because initially in the period prior it was only two and a half thousand for water damage excess, therefore the, the excess had increased.

Anyway, and so there's been back and forth between us and we offered to pay half the answer corporation because she said that the other complicating factor in this also was that floating floors were included in the policy. So she could not basically go to her own insurer and get it covered because we couldn't issue a letter of denial to say that they weren't covered because they are covered under our policy. So the question is, Amanda, and in another scheme we had someone else's flexi hose cause damage to their wardrobes, which are again a fixture and a cupboard under the policy.

And the insurance company will obviously pay the cost less the excess. And again, we've asked the owner to pay the excess and she's saying that, no, I don't have to pay the excess. And she said, "She went to fair trading, blah blah blah." And they said, "You don't have to pay it." So my question really is, I mean when it's a lot owner issue, there's there need to be a by-law to allow the owners corporation to pass on the responsibility of the excess being paid. Or is it just the fact that it is a lot owner issue which has caused the damage and therefore that lot owner should then pay the excess?

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Amanda Farmer: Yes. Okay. So there's a lot there. The first question is, I would think whether the owners corporation has to make an insurance claim at all. So I think we've talked about this previously in another chat, Reena, where there was a flood from one unit to another. I don't know if it was a dishwasher hose issue or you know, a sink just overflowed.

Reena Van Aalst: I think it was a, I think it was a hot water system that burst I think.

Amanda Farmer: Hot water system and there was damage from one lot to another there was no common property involved. And I think in that chat we discussed that it was open to the owners corporation to say well this is a matter between lot owners.

Reena Van Aalst: Yes.

Amanda Farmer: The owners corporation doesn't have any obligation in this situation. There's been no failure of the common property, it's kitchen that doesn't otherwise need to be waterproofed.

Reena Van Aalst: Yes.

Amanda Farmer: It's an accident sorted out between yourselves.

Reena Van Aalst: Yes.

Amanda Farmer: And my position was that it was open to the owners corporation to do that and and a lot owner cannot force an owners corporation to make an insurance claim even if the event is insurable. Now, we had some listeners who wrote into us after listening to that episode and saying that may not be the case.

And there is provision in the Strata Schemes Management Act for the Tribunal to order that an owners corporation make an insurance claim. That section in our New South Wales legislation is Section 174. The Tribunal may on application order any person who is entitled to the benefit of insurance taken out under this Act to make or pursue an insurance claim in relation to damage to the building or any other property to which the insurance relates if the Tribunal considers that the person has unreasonably refused to make or pursue the claim.

So my question for the owners corporation would be a, have you decided to make the claim? And if you have decided not to make the claim, consider whether that is a reasonable position because this lot owner having heard that you're not going to make the claim maybe aware of their rights under Section 174 to seek an order. And then that will be the question before the Tribunal, was it reasonable for the owners corporation to not make the claim on the basis it was a \$10,000 excess? And that might be a reasonable position.

Reena Van Aalst: So Amanda, sorry, I think we, we need to go back one step. I think because the owners corporation decided to make a claim, however she went to her own insurance and because floating floors are included in our policy, she couldn't claim that under her own policy. So therefore she had to come to us to say, "It's not included under my policy because it's included." We couldn't give a letter of denial.

So if, if we denied and said no, it's in some policies floating floor are optional, they're not always included. So in our policy it is included for that particular building and therefore there was no other way for her to be like her own insurance said unless you get a letter of denial to say that it's not covered under your building policy, which it is, therefore we can't honour your claim as an individual lot owner with personal contents insurance which had a much lesser excess of link \$500 or something.

Amanda Farmer: Yes. But we're still talking about covered or not covered and Section 174 acknowledges this. yes. If the event is covered, it is still open to the owners corporation not to lodge that claim.

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Reena Van Aalst: Yes.

Amanda Farmer: And Section 174 then opens the door for an owner who says, "Hey, this is covered insurance would've responded to this, but the owners corporation won't make the claim. I want you Tribunal to force the owners corporation to make this claim." The owners corporation can say, "Well, we believe that we have made the reasonable decision not to lodge this claim because the excess would be \$10,000. And this is a circumstance where we don't have a dog in this fight. There's no failure on our part. It's an unfortunate event."

Reena Van Aalst: Yes.

Amanda Farmer: "But it's not our problem." And I'm just, you know, stream of consciousness here. "It's not our problem that this owner has not covered her floorboards in her contents policy." Which I have to say as the owner of a fully renovated.

Reena Van Aalst: Oh no. She had no, she had covered it Amanda, but they said they need a letter of denial from our policy first. Because they know that some strata policies do contain it and you can't double insure. So she had insured it but she wanted a letter of denial from our office, from our insurance company to say they're not covered but they are covered. So that's why she was, yes, okay. yes.

Amanda Farmer: So it wouldn't be a letter of denial that she'd be going back to her insurer with, it would be a letter if the owners corporation chose this path, it would be a letter from the owners corporation saying, "We are not going to lodge the claim."

Reena Van Aalst: Yes.

Amanda Farmer: And then it's a matter for that owner or perhaps her insurer to decide what its next step is, which may be a Section 174 application and the owners corporation might want to get some legal advice as to how its position would then stack up. So that's sort of where my head's at with the insurance discussion. And it might be that an owners corporation who says, "Okay, having heard all that and that she has that right, we don't even want to go down that path. We're just going to lodge a claim, face the excess, whatever, let's just resolve it and move on."

Reena Van Aalst: No, no, No. We said Amanda, that she had to pay the whole excess and she refused and there was ...

Amanda Farmer: That part, I agree. You have no legal ability to recover the excess from her unless you have a by-law. And then that by-law would have to be carefully drafted a by-law that empowers you to do that.

Reena Van Aalst: Okay, that makes sense.

Amanda Farmer: So I agree with that part. Once you go down that path, you are going to be stuck as an owners corporation with the excess. But I'm not convinced you have to go down that path. And then I go all the way back to the first thing I thought of when you said owner installed floors, what were the terms of approval for that flooring installation?

Because I suggest that buildings are very careful when they're approving any kind of renovation work, whether it's minor, which is flooring or whether it's major renovation work, like a bathroom renovation that you have in the terms of your approval, whether it's a meeting resolution or a by-law. Very clear words that the owner cannot claim on the owners corporation's insurance for any loss or damage that may arise from the existence of these new items that have been installed. That is flooring.

So the only reason this is such an expensive fix is because these are floorboards that have to be replaced rather than carpet, which would be much cheaper. The only reason floorboards have to be replaced is because the owner has installed them. So there should have been, and I appreciate it, may have been a long time ago, might not have these terms of approval, but just helpful for future.

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Reena Van Aalst: It was a long time ago. Because we've only taken this building over two years ago and it was way about 10 years ago I think she put the floorboards in.

Amanda Farmer: Right. So this is the reason why we strata lawyers spend a lot of time and buildings get frustrated that their by-laws end up being pages and pages long. But it's because of these clauses that we put in here to protect the building down the track. Should an event like this happen, the building shouldn't be out of pocket just because an owner decided to make an improvement to their lot that should in all circumstances be the owner's responsibility.

Reena Van Aalst: Yes. Thanks for that Amanda. because also too, like she got up, you know, and spoke at the meeting and, and what I tried to articulate to her on many occasions is that none of this is the fault of the owners corporation. It wasn't their pipe that leaked, it wasn't there. It was your dishwasher. That's your responsibility. I know it's unfortunate it was an accident, but if it was an owners corporation pipe then we wouldn't be having this discussion and we, and guess it would get really emotional. She said, "Oh you know, I did my due diligence. I paid a buyer's agent when I came here and this and that."

And and also made accusations against the charter committee that, you know, they're all wealthy and they can afford it. But anyway we've, we've come to a conclusion to split the excess and she's agreed to pay it because she knows that basically like she'd have to fight it and it would cost her more than that. But yes, it's just good to know that in terms of that aspect, if you, if we do agree to make a claim on behalf of an owner when we don't really have to as a owners corporation, then that's the part that you deal with at the beginning rather than submitting the claim and then saying "You have to pay the excess." Yes. Okay.

Amanda Farmer: Yes, I think that's important for an owners corporation to assess its position on whether or not it needs to be lodging the claim or should be lodging the claim in the first place with reference to Section 174 and thinking about how it might play out. I haven't looked at any cases that might have been decided under that section or how it's applied. But I would think that things like an extreme excess situation where the owners corporation is not at fault. There may be situations where an owner does have contents insurance that will cover the loss and that can be relied on. It's an interesting area that I haven't looked at that closely but is worth bearing in mind.

Reena Van Aalst: Yes. And Amanda, what about if we have another one where the common property was affected? The slab? because the water went through the slab and then in this particular case, which is so unfortunate, it happened in the middle of the night and the underneath went to the bathroom and she slipped and she broke her hip. And that one, I think the slab is saturated. It's not like it's, you know, we have, you know, someone's been injured. So that one, you know, I said, "We did have to submit a claim." And then because again the chairperson was saying, "We don't really have to." And I'm thinking, well...

Amanda Farmer: Was this the failure of a waterproof membrane? So one bathroom leaked to another?

Reena Van Aalst: Well I mean it went through, I think because it was such a huge amount of water, it just went through the slab. I don't know, it's probably, I don't know if it is a value of the membrane as well that would've caused it. But the slab is affected.

Amanda Farmer: Yes. Because the minute that you have a failure in the common property, so there has been a common property waterproof membrane or there is a common wall that's failed somehow or there's a window that's fallen out.

Reena Van Aalst: Yes.

Amanda Farmer: Then insurance or no insurance are known as corporation under Section 106 in New South Wales is responsible for repairing and maintaining the common property. So then yes, you would be wanting to lodge that insurance claim simply to assist in meeting your liability.

Reena Van Aalst: That's right. And plus you have the public liability clauses of their policy also kicking when someone's injured and...

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Amanda Farmer: If someone is injured Yes. Injured within their own lot. I'm not sure how that relates to your building public liability, but if it's because of something that has failed in the common property, if it had been repaired or maintained or dealt with or then that wouldn't have happened then yes, I agree that that's a different situation.

Reena Van Aalst: Yes. Well I don't know. I mean again, this flexi hose burst, there's another flexi hose again within the apartment, an old flexi hose. I don't know if the bathroom's been renovated or as the original bathroom.

Amanda Farmer: Yes, good point.

Reena Van Aalst: I don't know. But yes, and again, I don't think there's any by-laws because historically many buildings people used to just renovate their bathrooms and there was no by-laws for waterproofing. So...

Amanda Farmer: What about by-laws? Making clear that owners are responsible for their flexi hoses and whatever may come.

Reena Van Aalst: Yes, Well I think that's what it's going to be the next port of call for our schemes. Because a lot of the insurance companies now, the minute there's one of these claims, they're saying that we need you to undertake an inspect one particular building. Unless we had an inspection of every single apartment and had a certificate to say that they'd all been and changed and whatever that said, we can't get insurance. It was, I think, I mean this is a building that we took over which had I think three before we even took over. And that was like the fourth one.

And they said enough like, yes. So this is I think where things try as another flawed concept because you know like it's part of the building structure but because it's within your own lot it's not, on the boundary then for, and then the whole demarcation of responsibility I think sometimes you can't force someone to have their flexi hose inspected as a normal course just to, unless the insurance company makes an issue of it also is becoming, because you know people don't want to pay, even in the top hundred dollars or \$300, whatever it is, it's a nominal amount but sometimes people don't want to pay that amount of money and trying to then force the whole situation then it's becoming a bit cumbersome in some schemes.

Amanda Farmer: Yes, I mean it's been a long time but I remember drafting a few of these by-laws in my early days as a strata lawyer by-laws that made lot owners responsible for their flexi hoses. I mean I suppose you could have a program where you set a time for those hoses to be inspected and to be replaced you could probably get access for the purpose of determining whether or not common property needs to be repaired or replaced. That's in our Act. I hear what you say. It's a bit of a gray area where flexi hoses are not common property. So why are we going into the lot and the owner may have a right to oppose that.

But I would've thought making clear, I mean it's lot property making clear in a by-law that owners are responsible for making sure they're flexi hoses up to scratch and not about to burst is a good way to deal with it as part of your arsenal I guess along with proper approval terms for any upgrade works. And carefully considering whether or not you do need to or whether it's in the best interest of the owners corporation to make an insurance claim in these circumstances.

Reena Van Aalst: Yes, I think that's the key thing as well because the common property is not affected I think, because the slab was affected so and someone was injured. But I think also as you said, Amanda whether if it was like a flexi hose that damaged someone's wardrobe again should we have even got involved because it was their flexi hose and their wardrobe. And in a sense, yes, that's a good point. Thank you for that.

Amanda Farmer: Well, I'll leave that one with you if you feel up to it. Let us know how it works out and no doubt there's others out there with views on this very common situation in strata.

Reena Van Aalst: Yes.

Amanda Farmer: My challenge for this week, I'm hoping to continue a discussion that I started last week's podcast episode. All about meeting minutes, how much detail is too much detail in meeting minutes. And what is best practice when we are recording

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minutes of our strata meetings whether that's committee meetings or general meetings. If you haven't had a listen to that one head back and have a listen to it. Episode 399. I have heard from a few of you as I expected to surprisingly to me so far, I'm hearing from a few of you who agree with me that minutes should be kept very simple. They are a record of what was done, not what was said. Drawing on Robert's Rules of Order, rules of parliamentary procedure.

There is a comment on the website under this episode disagreeing with me and suggesting reasons why we should have more detail in our minutes recording the pros and cons, recording some of the debate for and against a particular motion. I thought I might continue this discussion if it's okay with you, Reena, and ask you as a strata manager who is taking minutes of meetings, what your thoughts are on how detailed meeting minutes should be and what your experience on the ground has been when you might be taking instructions from your clients about what should or shouldn't be in minutes. You got thoughts on this?

Reena Van Aalst: Yes, it's very interesting because I just had a meeting where there's an, an owner's representative who's turned up. She's actually the wife of the husband who owns the lots and basically telling me that I needed to put every single thing in the minutes and the interjections. I didn't put an interjections that this one and I basically, there's three textbooks, Amanda, that I'm just looking up here that I've got hall is meaning minutes is that there's three different textbooks that I use for explaining to people, like what the common law provisions are and, and the Corporations Act provisions too in terms of minute keeping.

And it's basically to record decisions but there also needs to be some commentary around the context. So, and the way that I've always trained managers to write minutes is if you are reading these minutes and you weren't at the meeting, would you understand what was being discussed and why and what, what had occurred. Because sometimes people put things and I attended a recent training that I had to attend, which I won't talk about as to the author of the training session. However, people putting things in the past tense is really important because that's a given that minutes are in the past tense because it already has happened.

But to say that something was resolved to be decided, I mean I just think that like, I mean I get minutes, I just make no sense. I don't know how you can resolve to decide something. You either decided to do it or you didn't. It's not, you can't resolve to decide. But that's another issue I find with a lot of minutes that they're pretty much incoherent. Like I try and read them, I think doesn't make any sense to me. So I think there's, there's got to be enough detail to explain what happened but not to the point that it's an essay. So I'm not sure if I'm really answering your question, Amanda, but...

Amanda Farmer: No, you absolutely are. And in the podcast episode I talked about some of the Corporations Act provisions and I reached the conclusion that our owners corporations are different beasts to listed companies, for example, that may be held to a higher standard when it comes to minute taking. Especially when you're talking about minutes of board meetings where we have professional board members who absolutely should be well-trained and skilled in taking proper minutes of meetings. I think our volunteer committee members can be let off the hook a little bit when it comes to minute taking, maybe not so much our professional strata managers.

And to start from a place that, number one, your motion has to be clear as to what you're hoping to achieve. And I agree with you, Reena, a motion to discuss or a motion to resolve to decide is bordering on incoherent. And it does make your minute taking very difficult. But if your motion is clear about what you're hoping to achieve, then it has always been my position that your minute should step one record whether or not the motion passed or failed. And I agree with you, sometimes we can't even get that far.

Reena Van Aalst: That's right.

Amanda Farmer: When we're looking at minutes. And so that level of skill and knowledge about minute taking is lacking in some areas. And I'm not just talking about volunteer committee members where there is, and, and I didn't go into this detail in the podcast, but having heard what you've said and and heard some other feedback, I agree that there will be from time to time topics that are controversial that you know from your experience as a strata manager or your experience in the community, that litigation might be on the horizon because of the subject matter of this motion.

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Maybe it is an application by an owner to seek approval for their major renovation work. They've been drumming up support over the last few months. It's going to be borderline decision. It's a special resolution. The result comes in and you know there's going to be a challenge in the Tribunal as to whether or not this has been unreasonably refused if the motion fails.

So situations like that, our professional strata managers in particular might be alert to the need to record some of the reasons why the motion was voted against or some of the reasons why owners chose to vote for a particular action. I want to acknowledge that. But I also want to be very careful not to encourage or recommend our communities to get into the weeds when it comes to minute drafting. Because trying to record the debate in its entirety, trying to record that Mrs. Smith got really upset and left the meeting because Mr. Jones said some unfriendly words to her.

All of that stuff in my experience, only creates more conflict. There's more tension, there's more pressure ultimately on the secretary who might be the person taking and signing off the minutes and it can freeze some communities and prevent them from producing accurate minutes at all and send them down into a spiral of debate. So that's where I see it.

Reena Van Aalst: I think it's about capturing the essence of, of the resolution. But not like, I mean public companies, all the big, they have a company secretary that's well versed in how to, but the other thing that we talked about in those meeting rules and manner, it's like minutes are not a transcript. And that's why I think what people are doing, it's not a, he said she said every single word. It's more about trying to, to summarise the discussion and then sometimes even using point form, the, the reasons were as follows, A, B, C, D. Not who said A, who said B and who said C type of thing.

But I still think that, I'll give you an example now like we've got a building where an owner has went to proceed with renovations and they found this concrete cancer. Now part of the by-law that was passed in 2015, mind you before we even took over and you never started this renovation until now, was that he had to let the owners corporation know two weeks before the work started and to pay renovation bond. None of which happened. It basically, we only found out he started because he said there's concrete cancer and there's concrete cancer above apparently, I'm not sure what happened with this. He'd removed the ceiling in in the bathroom and apparently it's about to fall in because there's concrete cancer. So we had to have this ceiling propped at weekly cost, 900 bucks or something, whatever it is, until the insurer we've tried to see if it's an insurance claim and we're waiting for insurance assess report following his inspection.

Now the issue is that the insurer has now asked me for all my strata committee meaning minutes. And there nothing in there about that. Anyway, but the issue is, that in other cases that I've been involved in, you know the Tribunal or NCAT, it's really the minutes that have helped me to prove that the committee has acted properly and is not detailed in the minutes for anyone reading would thinking hang on, yes. That it's not just, you know, copious emails that have no, like you've gotta produce all your emails for NCAT. But this is more about showing that the owners corporation had meetings, they were regular, they like in this case his lawyer said, oh this has been going on for five months. And I said no. On the 25th of October he reported this, we had a committee meeting, we got a proposal and on the 6th of December it was agreed to engage the engineer.

Now at that time we didn't know about this bathroom ceiling issue. It was more about just the concrete cancer and the fact that he couldn't do his renovation. Now he's had to move out because he can't use his bathroom. So that's another issue that we have. But, and I think that keeping good minutes I think helps an owners corporation when there's a problem. It could be years down the line, which is in this case years down the line to show that we've acted properly. There's never been any record of this issue.

And I think the insurance company think is trying to look at is like you knew about this and you've done nothing, which won't be shown because all our minutes won't even show this has ever been raised. So yes, I think it's one of those things where I think people have to look at it and say, okay, if I wasn't at the meeting and I'm an owner, would I understand what happened? Is there enough information in terms of quotes, who it's from, the date, the amount, what it's for. That's pretty, you know, obvious.

Amanda Farmer: Sticking to the facts.

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Reena Van Aalst: Correct.

Amanda Farmer: Not necessarily the debate.

Reena Van Aalst: Yes.

Amanda Farmer: You mentioned their Reena training and how you were trained to take minutes and how you train your staff. Do you think that for our strata managers who are generally the ones who are having to draw up minutes or at least finalise them and issue them, do you think there is adequate training and understanding of how they should be done?

Reena Van Aalst: No. No, not at all. I mean I think a lot of buildings, majority of strata schemes don't even have regular meetings. That's the problem. They, you know, especially the smaller ones, they have an AGM once a year. I think it's always approved by email. And I kept saying, I interviewed someone the other day and I said, but what about when you're approving quotes like that are 5,000, 2000? You know, like aren't you having committee meetings in writing? Oh no, it's just done by email.

So there's that and there's also the fact that yes, managers aren't really trained on how to draft minutes at all. I think that there's a real lack of probably understanding of how many that should be drafted. I don't think that anyone's ever been trained like, I mean I was trained by a lawyer. I wasn't trained by another strata manager. But that's probably the issue I'd think. I think we need, we need I think more professional training from people who are well versed in this area. I think not just sort of in the regular CPD type training.

Amanda Farmer: Well, good to put it out there to acknowledge that might be a gap. Thank you for that indulgence continuing in discussion that was started last week over to your win for this week Reena?

Reena Van Aalst: Well Amanda, my win is actually just talking about the fantastic conference that I attended that you put on on the 23rd of February, which was so well attended and it was a beautiful location. It was probably the best quality content we had great speakers, great venue and I just wanted to share it out there for next year for any strata managers that are wanting to do their CPD.

It was such a great event and all of us learned so much. And I think also what I find is it's good doing your CPD not in dribs and drabs. I find that for me, you are in that mindset and there are different subjects and topics and you have your peers there that you can ask. because when you do it even online, face to face, but you don't really have the same interaction that you can have with other people that are asking questions. Because I think people probably don't feel as comfortable asking questions on those types of forums. Whereas when you're all together in a room and also there's other points of view from other professionals like the other lawyers that were present and you know, other people I think, I think it was just such a good way to learn collectively.

And I definitely want to just commend you and thank you for such a wonderful job. And also the book that you gave us, the beautiful packs that we were given with some goodies and you know, food, alcohol and reading

Amanda Farmer: All at the same time. Oh, well thank you for saying that Reena. It was lovely to have your company and the company of your team and we did spend about half an hour together presenting a session about the new New South Wales legislation. So I know that those in the room really benefited from hearing your hands-on experience and how you are grappling with those new requirements in your office. That was our one day CPD event in Mudgee. I agree with you. I've heard from others that they found it really simple to be able to sit there, engage in the content and the learning and then do their assessment and then tick everything off done for the CPD year.

We will be hosting the event again next year. The date has been released as the 28th of March, 2025. We haven't opened up public ticket sales yet. Haven't quite got my act together to get that up and running on the website, but I'll certainly be letting everybody know when that's available. And the CPD year is changing, as I know many of you have heard through Fair Trading and

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through SCA. The CPD year for strata managers in New South Wales will now be the 1st of July to the 30th of June, which makes a lot of sense.

The compulsory topics for the upcoming CPD year haven't yet been settled. I know there's a lot of discussion going on within Fair Trading about what those should be. Hopefully some of the curriculum coordinators are listening to this podcast.

Reena Van Aalst: Yes. Minute taking, getting some ideas...

Amanda Farmer: minute taking would be a good one. So yes, I remain an approved CPD provider approved by New South Wales Fair Trading and it will be something that I'll be offering again in the next CPD year. So looking forward to it.

Reena Van Aalst: That's wonderful.

Amanda Farmer: My win for this week, in addition to celebrating episode 400 of our podcast.

Reena Van Aalst: Wow, congratulations Amanda. It's such an achievement. 400 episodes.

Amanda Farmer: Thank you. It is episode number 400 this time around. They sneak up on us, Reena. yes, they sneak up on us very quickly.

Reena Van Aalst: Yes, very scary.

Amanda Farmer: 400 episodes with an episode each week means that this is year 8, we're 8 years old.

Reena Van Aalst: Oh my God.

Amanda Farmer: On the podcast. And I think for almost most of those years, six or so years Reena has been my regular co-host here on the podcast. So it's been great to have your company, Reena. And I know our listeners often say our strata manager listeners often say that these are the chats that they most look forward to getting some practical guidance and if only to hear that what you are going through is the same thing that they're going through and we're all in this together.

Reena Van Aalst: Yes, exactly.

Amanda Farmer: But in addition to episode number 400, which we are very proud of, I do have a separate win to announce this week. This win comes from a member inside the Your Strata Property Online membership community. This member has recently won a Tribunal case, self-represented.

And I want to highlight this because those of you who have tuned into my teaching over the last 12 months or so may have heard me say previously that our Tribunal is a place I really believe our Tribunal is a place where you can be successful, get the right result without legal representation. And some of my trainings go to how best to prepare for the Tribunal when you don't have a lawyer representing you either because the Tribunal says, "No, I won't allow lawyers to attend," or because for financial reasons you've decided that's not where you need to be spending your money. Cases where the issue is a lack of repair and maintenance.

So there's a failure in the common property. There's a water leak, there's mould, there's a window falling out, there's damage to a floor, whatever it may be. I think from a legal perspective, those are the best and often easiest cases for owners to represent themselves. And I do a lot of work inside our membership community one-on-one with our members, whether it's in the forum or in a member call, assisting owners who are representing themselves in these kinds of cases.

So I'm always really thrilled when often it's an email in my inbox giving me a copy of the decision where a member has said,

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"Amanda got our result today and we have been successful." So this win came from an investor owner where the bathroom was leaking due to a failed waterproof membrane. And it was a situation where the owner had asked the owners corporation many times, please fix it.

Interestingly, by the time the Tribunal hearing came around, the issue was what the method of repair should be. And the owners corporation wanted to apply a reasonably cheap, straightforward ceiling of the tiles. So a mega sealed solution or something similar to just put a seal on the tiles and then they won't leak anymore. The owner had some expert evidence to the effect that that wasn't going to be sufficient. And the Tribunal accepted the owner's evidence. The Tribunal looked at evidence that the ceiling solution had actually failed in other units.

And it was quite persuaded that therefore this was not a viable option in this unit. And the Tribunal went all the way to awarding temporary accommodation costs for the short period during which the bathroom couldn't be used while the tiles and the waterproof membrane were being replaced. That was ultimately the order and damages to replace carpet that had been affected by water penetration. So tick, tick, tick, this owner, this member of our community got what they were entitled to a very sound decision from a legal perspective upon my reading of it. And all done without legal representation, the owners corporation actually sought leave for legal representation. And the Tribunal said, "No, this is not complex. You don't need it. Do your best."

So congratulations to that owner. And I share this because I just want to give those owners out there who are going through these battles on their own, doing the best that they can. You are on the right path, you're on the right path, and there are lots of resources out there and especially inside our community that can help you on that path. Others have paved it before you.

Reena Van Aalst: Yes, it's very interesting, Amanda, that you say that because I think there are many cases, I think where there has been a failure to repair and maintain common property. But I think when it comes to bathrooms, I'm not sure what your experience has been, but in some of my schemes where, you know, there are original bathrooms is still, you know, like I've got a building that's, it's, a 3 digit strata plan. So that's, that's how old it's my building was actually, the building is actually a hundred years old. So not that the bathroom's a hundred years old, but the strata plan is one of the early ones I'd say in the forties.

And of course someone has an original bathroom that's now leaking. Now every other owner in the building has renovated their apartment. There is no way anyone else, because this is a rental apartment, the owner hasn't lived there, she lives in a nice big house, in a nice suburb somewhere else, but has failed to basically do any renovations, which is obviously her.

Right. But the committee have then come to me and said, because this owner hasn't done any renovations, it's going to now fall on the owners corporation to undertake this repair. So what are your views, Amanda, on the apparent inequality where this is again, why I think that right is a very flawed concept because those people that have renovated their apartments and taken ownership and, knowing that a bathroom can't last x amount of years, it's only a a short, it is a set lifetime for waterproofing membranes to be effective and stop water penetration.

So what are your thoughts about that where when people come to and say, "Hang on minute, this is an old building, we're going to initially try the sealing thing that didn't work in this building that you've mentioned and see how we go." But I, I don't hold my hope hopes up. I think it's just good to try it and see how we go. Mm. So what are your thoughts on that, Amanda?

Amanda Farmer: Oh look, I mean you are suggesting that the owner who has the original bathroom has maybe lived in that property for a long time or purchased that property with the original bathroom, then has the benefit when that bathroom waterproof membrane fails of having the owners corporation essentially fund a new bathroom.

Reena Van Aalst: Yes. Essentially it is a new bathroom by the time you take anything out and yes. yes.

Amanda Farmer: In most circumstances, if a waterproof membrane has to be done, then tiles have got to come up and then we've got to replace tiles. yes. My short answer to that is, well, that that is the law then you're right that that is how it works. Owners that

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have gone to the time, the trouble, the expense of renovating their bathrooms will have been benefiting from that for that period of time, either through their own enjoyment or if it is an investment, then they're getting higher rents because of that upgrade that they've made to their property.

And I think that's a great thing. And I think forward thinking owners who prioritise their investment, who want to increase the value of their investment, they're doing these things like upgrading their properties and in that way they're getting that financial benefit in the same way that an owner who does nothing and invests nothing then gets the financial benefit of the owners corporation ultimately paying for their new bathroom.

But they've lost all of that time beforehand of increased value that they could have had if they had made that investment, if they had upgraded their bathroom, could have got higher rents, maybe those who were selling could have got a better selling price. That's the decision that they make. And I think it's an interesting gamble I suppose that you take, I don't know if anybody actually does this, you'd have to have a pretty good knowledge of strata law, but do you think there's owners out there who'd make that gamble and say, well I'm not going to touch my original bathroom because I'm going to wait, I'm going to wait 35, 40 years for their waterproof membrane to fail and then my payday is going to come in. I don't know that anyone consciously does that.

Reena Van Aalst: No, I don't. No, I don't think it's a conscious decision as such. But I think when they see that, you know, listen to our podcast hearing about cases and things like that, or seeing other owners in their building, because I do have another building which we manage where, you know, people saying, well, that person hasn't renovated their bathroom, now we're having to pay the cost. I suppose in a sense some people don't mind living in circumstances or some might not have the money to, I mean, bathroom renovations are not cheap. I mean...

Amanda Farmer: True

Reena Van Aalst: Out of any part of of your apartment, that would be the most expensive part to renovate. So sometimes I think it's not by willful neglect or happy with the status quo, it's more that it's a big financial burden and cost to upgrade and replace your bathroom. So yes, I mean I like the ideas that you've given, Amanda in terms of there are financial benefits if you're a landlord, you know, I mean, some people don't mind living the horrible bathroom, but some people, you know, you're right. They just haven't had the benefit if they want to sell.

Amanda Farmer: And you know, from the owners corporation's perspective, if you do have a majority of bathrooms that have been renovated, that is a great thing. And that is, that is a big burden removed from an owners corporation. And I always say to owners who are proposing bathroom renovation applications, putting a by-law forward at a general meeting, and sometimes they come to me and they say, "Oh Amanda, I don't think this will be approved because there's been two other renos done this year and everyone's sick of the mess and the noise and the disturbance and I think they're just going to knock it back because they don't like me or whatever the reason is" I say, "Look, why don't you try making this pitch at the general meeting, explain to owners that by doing your bathroom yourself, you are removing one more bathroom from the obligation of the owners corporation. So if there's 20 units in the block and 10 have new bathrooms, then the owners corporation is only responsible for those remaining 10 that are still original." And so the more people who have these renovations approved and who complete them pursuant to, let's just add, yes, proper by-laws and shift responsibility over to the owner.

So there can be no dispute about that, then that is freeing up the owners corporation to devote its its energy, its money, its attention to other things around the common property and it doesn't have to be responsible for all of those bathrooms. So in a building like the one you are, you are dealing with Reena, I suppose the answer might be well lucky. It's just one lucky. It's this is the only one and everybody else has gone their own way. It's not the case in some buildings.

Reena Van Aalst: Yes, it's true actually. I'll try. I'll try and use those positive arguments you put forward to try and make them feel better. yes, that's great Amanda.

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Amanda Farmer: Well thank you for the excellent chat. We've covered a lot of ground today, Reena, as we should in this very special episode number 400.

Reena Van Aalst: Yes.

Amanda Farmer: I will look forward to catching you some other time in the four hundreds coming up very soon. No doubt. Exactly. Have a good week, Amanda. You too. Bye Reena. Bye.

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