

Ask Amanda Now: 12 April 2024

In today's "Ask Amanda Now" session, Amanda answered Viv's question: "Our strata manager has a policy that they will not issue a notice to comply with a by-law until there are 4 breaches. This is not in line with the Act. Can they do this?"



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Hello and welcome to Ask Amanda. Now I am your host Strata lawyer, Amanda Farmer. It is Friday afternoon and that means we are heading out live to the Your Strata Property Facebook page. We are going out to LinkedIn, we're going out to YouTube. It's fabulous to be here with you this Friday afternoon as I so enjoy doing each week. Today we have a short session.

I'm going to answer one strata question already chosen. We've picked this week's question based on drawn from the many questions sent through to my inbox after we put the call out this morning drawn from questions that were here on the Facebook page. Thank you so much everybody who has asked their questions. Many of you here live always like to see you joining me live.

Anna is saying, hi Amanda. Nice sunny day. It has been. I can, the reason I know that is because I can see out the window. Anna, it's been one of those days for me where I haven't been outside yet, which is a little bit sad. I know and everybody should aim to get outside at least once every day.

But I am prepping for an NCAP hearing, a tribunal hearing in our New South Wales Civil and Administrative Tribunal next week. So I've been head down. I'm surrounded in highlighted papers and folders, which you are sped the burden of looking out. I've hidden away here but that's the reason I haven't been outside yet. So I will make a point of doing that and enjoying some of this sunshine while I still can.

I hope you've been able to enjoy it. Sean is here saying hello and Wolf. Yes, the dogs know the second I go live. They know that that's the time to run around and start barking. So at least this time they were outside but you still got that one. Hey Nathan, good to see you. Great day for it indeed.

Hey Darl, happy Friday strata friends, happy Friday to you. Hey Debbie in Brisbane. Vivian is here saying hello. Nice to see you Vivian. Sean is saying 14 out of 10 would Pat, Sean, I don't went over the head. Gimme a little more information. Welcome everybody to Friday afternoon. I was asked a question on LinkedIn this week,

which was, Amanda, why do you host these live sessions at cocktail hour? And I said that is probably the time, most likely to be the time that I am available during the week. Those of you who have been attending our live sessions for many years, we have been doing this since 2020. We started in March, 2020 I think the week after everybody was locked down during the pandemic.

We started Friday happy hour. It was originally four o'clock Friday happy hour. We couldn't go to the bar, we couldn't connect with our colleagues and friends. So we started Happy Hour here on a Friday afternoon. Four years later we are still going strong but at least I have removed the cocktails from happy hour. I don't know about you and if you haven't a cocktail,

Sean's given me a cheers with the beers there. Good for you. I've had to remove the cocktails because my liver just wasn't cutting it. Each coping each Friday afternoon here with you on happy hour, but we are still here talking strata. That is for sure. Hey Miliana, good to see you. Michelle is saying 18 degrees in Orange heat wave this time of year.

Yeah, see this is what shows you I haven't been outside 'cause I got up this morning and it was cold and I just put my hoodie on and it's not hoodie weather out there anymore but it is here in my office. So ask Amanda now if you are new here to the pages, so many of you are, we've had lots of new friends,

strata friends, come and join us here on the Facebook page. Many of you're very excited about the webinar that I will be hosting next Thursday evening. I'm gonna tell you a bit more about that in just a sec, but if you're new to the page, maybe this is your first time attending Friday Live or an Ask Amanda now session. If it is your first time,

feel free to jump in and let me know. I'd love to give you a special welcome, but I am here almost every Friday afternoon with a strata update. Sometimes it's a long session. We call Friday Live like it was last week. We're here for about an hour. Sometimes

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we have a guest looking at strata cases. Any media about strata been a little bit of that lately and sometimes it's the shorter session where I have chosen one question from the many that you have asked me to answer here live for you today is that shorter session.

We call it an Ask Amanda Now session Leoni is here saying hi. Hey Leoni, nice to see you. I have mentioned there our webinar who is registered for next Thursday nights strategic strata litigator webinar. I will be with you live on Zoom. It is the, the best idea is to register through Zoom so that I will be able to see your chat,

see your comments, give you a hello next Thursday evening as I host our strategic strata litigator webinar. If you are not yet registered, Mina is here with me and she's going to pop a link into the comments here for you. That is the place to go to get registered for the webinar. It's all free, but you do need to be registered to get access to your unique Zoom link.

I'm gonna be sharing how to navigate ncat, the New South Wales Civil and Administrative Tribunal end-to-end without expensive legal fees even if you've lost faith in the system because so many of you have told me, I know I hear it, I see it. You have lost faith in the system. I'm gonna help you, I'm gonna help you through that process, answer the many questions that have come through from those who are registered and when you found out I was running a webinar all about ncat,

you've posted lots of questions here on the page, so the team's been collating all of that and we're going to cover as many of those as we can. Next Thursday evening, 7:30 PM Eastern Standard time. I will be with you live. I'm getting thumbs up from those who are registered. Andrew is registered, excellent. There is a link there. Sean's given me a hands up a link there if you're not yet registered to go ahead and do that.

We've got a few hundred people already registered for this webinar, so it's gonna be lots of fun Next Thursday evening, I won't be here next week. I'm heading to the city to run this NCAT hearing and I'll be in Sydney and I haven't yet worked out where I'm going to be, but as always exciting venues for you as you travel along with me in this traveling strata show.

Looking forward to seeing you as many of you as possible next Thursday evening. Alright, onto today's question. I've told you one question we have for you, one strata question to answer. I like to choose these questions that I think are gonna help the most number of people. Some of you ask really specific questions. Love it. I'll tell you where you can go to get help with those specific questions.

But for today I have chosen a broader question that I think the answer to which will help many of you. Here it is on the screen. Thank you Mina. Today's question comes from Viv and the question is this. Our strata manager has a policy that they will not issue a notice to comply with the bylaw until there are four breaches. This is not in line with the act.

Can they do this? Wow. So Sean, I have chosen this question. This jumped out to me today. It was a question in my inbox after we put the call out at about midday. If anyone's got any questions, send 'em through. Viv did it jumped out to me because this is the third time this week that I have heard about strata managers.

I'm gonna say overstepping their authority, making up rules and enforcing them, attempting to do things the way they wanna do things even though they're clients, the owners corporation, the strata committee, the owners are not instructing them to do this. It's the third time I've seen this kind of example just this week. So beginning of the week I had a meeting with a client of my legal practice.

We were meeting on Zoom and they were telling me that the owners corporation had resolved to engage a lawyer. Costs had all been approved, that lawyer had been chosen as part of the resolution. There was a strata committee member who Was, was authorized to instruct the lawyer, communicate with the lawyer, and notwithstanding that resolution was in place, the strata manager would not send the brief off to the lawyer and the strata manager was insisting,

oh, we need to wait until we've got this engineer's report that we're still waiting on until we get the engineer's report. There's no point briefing the lawyer. And when I heard about this speaking to this owner, I said, that's not the strata manager's call. The

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owner's corporation has passed a resolution to brief the lawyer. The strata committee member is authorized to issue that instruction to give that instruction.

If you're telling the strata manager that's what you want, that's what they should do. And it is not for the strata manager to decide whether or not they will follow an instruction of the owners corporation. So that was the first example this week of what I'm calling a strata manager overstepping their authority, wanting to do things their way even though their client is not giving them that instruction.

The second example this week was a member inside our online membership community, a post in our forum. They were telling me again, a strata committee member telling me that they wanted their strata manager to issue a work order to a particular fire services contractor. So the annual fire safety statement needed to be done. They had already been a contractor through, but they weren't that confident with the qualifications and the skill of that contractor.

And the committee wanted their strata manager to issue a work order to somebody else. In fact, the service provider that was used the year before and the strata manager wouldn't do it, wouldn't issue a work order on the instructions of the strata committee. And I just, it's one of those things similar to records being withheld, one of those bug bears that really,

really gets to me. I have no idea why strata managers would put themselves in that very risky position of not following their client's. Very legal, very clear instructions. So that was the second example, A strata manager who wouldn't issue a work order on the instruction of a strata committee. And Vivs question today, the third example where the strata manager has developed this policy and in vivs email there was a little bit more information.

It was a policy, it's a policy of the entire company apparently, and you can let me know in the notes if this is sounding familiar in the comments here, if this is sounding familiar to you, but apparently this agency has a policy that they will not issue a formal notice to comply under the act unless the owner who's breaching the bylaws or the resident who's breaching the bylaws has actually clocked up four breaches or there've been four incidents that could be called breaches of the bylaw.

Viv is very correct in saying that's not anywhere in the act. Where does it say that? Can they do this now? I'm just gonna head over and see. I can see some comments in the corner of my eye coming through thick and fast here. Sean's saying one breach, one strike. Anna saying four breaches, question mark. Good to see you Megan.

We missed you too the last few weeks. Oh, moonlighting as a teacher on Fridays. Oh, I wanna hear more about that. Sean's saying Overinterpreting delegation of authority. Yes, so that's a good point. I'll come back to that. Sean, remind me if I don't. Leoni is saying first warning, second warning, then enforcing. Sean is saying most managers and committees usually issue an education letter and a warning,

then the notice to comply. That's my experience too. Sean, what I'm interested to hear from Viv is that this is apparently a policy of the agency that there before breaches four sounds like a lot to me. The the bottom line is there is no requirement in the New South Wales legislation that there be any kind of education letter or any kind of warning issued before you issue a formal notice to comply.

And when I talk about a formal notice to comply, I'm talking about a notice to comply with the bylaw issued under section 146 of the Strata Schemes Management Act. Link here in the comments for you if you wanna have a look at that section. But that is a provision in our New South Wales legislation where an owners corporation, so only an owners corporation,

can issue a notice to comply with a bylaw under this section. Lot owners can't issue these kinds of notices. An owners corporation can issue a notice to comply with a bylaw if there has been, if the owners corporation is satisfied. Other words in the section that there has been a breach of the bylaws once that the, the reason why the issuing that notice is important,

and I say it's important to do it pretty promptly, is because once that notice is issued, if there is then further breaches of the same bylaw by the same person, it opens up the opportunity for the owner's corporation to then go to the tribunal and seek a penalty order. So if you've issued a notice to comply your option as an owner's corporation to then go to the tribunal and get a penalty,

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so an actual payment of money that the resident who's breaching or owner who's breaching the bylaws has to pay to the owner's corporation, that's that's the path that you're on. Once you issue a notice to comply, you can proceed to a penalty. You can't proceed to a penalty unless you've first issued that notice to comply. So I can understand why Viv would be a bit frustrated in saying what really we have to wait for four breaches before we can go down that path.

That really does seem a little bit silly. I do agree that in situations like for example, noise and this has happened in my community where I'm an owner before where there's a noise complaint or a noisy party, a one-off event, issuing a letter, having a chat as Sean B puts it, education letter. By the way, did you know we have a bylaw?

Bylaw number one must not disturb peaceful enjoyment. That is usually a good first step, first time around, especially if you've got new tenants, residents who might not be familiar with the way this community operates before going that hard line of issuing that section 1, 4 6 notice. I think that is a good policy to have, but it's not the law, it's not required.

And certainly issuing four of those warnings or education notices I can see is not really dealing with the problem in the way it might need to be dealt with promptly and effectively. Muskan is here with questions about proxy votes at AGMs. Thank you for your question. Muskan not the one that I have chosen today. Darrel saying we may not always agree with a direction,

but if it's a lawful direction then we carry it out. So true and thank you for saying that. Darryl takes me back to the top of this chat where I was saying just blows my mind that there are strata managers who will not act in accordance with their client's instructions. The manager is the agent, the owner's corporation is the principal. The principal is usually giving instructions via the strata committee.

The strata committee has given the agent an instruction. As Darrell says, you might not agree with it, but as long as it's lawful then you, you really should be complying with it and if you're not going to comply with it, then have a bloody good reason why you're not going to comply with it. The fact that it might not fit with the business's policies,

which are a little bit unusual in my experience, is not going to be a good enough reason. Marge is saying great advice, Amanda, thank you much. Bill and Ben saying what the, I have a vague memory that we might have discussed this before Bill and Ben, where you said something similar that there's no need to issue warning letters or any kind of lead in letter.

Just get that notice to comply out. Why does it all take so long? Anna says this is the same as being completely ignored when advising the strata manager something and no action from them. Yep. I see that frustration with owners as well. Definitely. Denton, not sure that you've joined us before. Lovely to hear from you. In some cases there is only one breach says Denton for example,

an unauthorized use of common property that should be rectified. Yeah, that is something to remember, Denton, when I have a whole webinar on this, which the members in our community will be familiar with, but a webinar about enforcing bylaws and whether you take the path of the notice to comply and the penalty or you take the alternate path of seeking orders that something be done.

Those are two very different paths and suited to two very different circumstances. So where you've got a noise complaint and you kind of wanna send a message that this is not the way things operate around here, you might want to go down the notice to compliant penalty route, but where you have an unauthorized use of common property, you need some goods to be moved or you need some work to be fixed or you need some common property to be restored that might have been altered.

You actually need an order that something specific happens. A penalty's not gonna help you in that case, just gonna be a slap on the wrist for somebody. But in that case, you need a specific order from the tribunal that the owner, the resident who's breaching the bylaws actually does something to remedy that breach. So that's a different path that you would take.

It wouldn't be the notice to comply and the penalty path. Sean, one of the Seans I think mentioned earlier, delegation of authority. That's a really good point to raise here because something for Viv to check is that there isn't anything that the owners corporation might have agreed to in the agency agreement with the strata manager or in some resolution that might have been passed at a general meeting many moons ago that you haven't unknowingly agreed to this process.

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I know at general meetings there's often stock standard motions about levy collection procedures. For example, if an owner hasn't paid their levies on time, how much notice do we give before we commence legal proceedings? There's a 30 day notice, a 60 day notice, a 90 day notice. None of that is in the legislation, but a lot of owners corporations sign up to that process at their general meeting and pass a motion that that is the process they will follow.

Just check Viv that you haven't unknowingly signed up as an owners corporation to this kind of a process. It would be unusual. It's not one that I've heard of before and indeed, if you are going down the section 146 path and you are going to issue a notice under that section, you do need to make sure that you have either passed a resolution at a committee meeting or a general meeting to authorize the issue of that particular notice to that particular resident or,

or that your strata manager has delegated authority under the agency agreement to issue these kinds of notices on your behalf without that meeting resolution. So that's in the section. If you go over and have a look at section 146, it does make that clear. The interesting thing about that section is the at the moment is that it has recently changed to make clear that if the strata plan is just two lots and it's clearly one resident complaining about the breach by the neighboring resident,

you don't need to get the meeting resolution before issuing the notice to comply. So that's addressing a concern that of course in a two lot scheme, if there's equal unit entitlement, it's gonna be very hard to pass that motion to issue a bylaw breach. Notice the owner who's in breach is not going to vote in favor of that notice being issued to them.

So there's been examples where those kinds of disputes get really deadlocked in two lot schemes. So section 146 has been recently amended to essentially exempt two lot schemes from that process of having to first get a meeting resolution. In my mind, it does beg the question then who has the authority to instruct The strata manager to issue the notice? I'm not sure if that's come up with anybody,

any strata managers at the moment dealing with notices to comply in two lot schemes. But I can see that being a problem down the path. Okay, Viv, I hope that is helpful and answers your question. Let us know how you go with that one. As I said at the top, I chose this question because it's the third example this week that I've heard of Strata managers just going off on this weird tangent of sure have policies and procedures in place and this is the way that we would usually do things.

The strata managers here will be very familiar with that. Encourage being able to inform your clients of, this is what I usually advise committees and advise owners corporations to do. But if you get a clear instruction, having heard all that to we wanna issue that notice to comply, this is what we, your client are asking for. It's in accordance with the law.

Get those resolutions passed. There's no reason why that shouldn't be happening. That was our one question answered today for our Ask Amanda. Now session. As I always say, we get lots of these questions. You'll see them here on the page, you'll see them in my inbox, some of them very specific questions specific to your situation. They're getting more and more specific.

I have to say, the ones that I was looking at in the spreadsheet that Ramina draws up for me each week, were quite specific. This is not the place that I'm generally going to answer those kinds of specific questions. The place where I'm answering those is over in our online membership community. Our members have access to a q and a forum where you can write out your question for me,

gimme the details that you think I need to know, and I'll answer those questions for you in writing over in our forum. I'm over there most days answering those questions, so if you haven't been able to get your question answered here on Ask Amanda now, you can head over to strata.membership.com and you'll instantly get access to the q and a forum when you join us inside the membership.

I'm gonna see so many of you have, so many of you with me live next Thursday evening, 7:30 PM for our strategic strata litigator webinar, how to Navigate NCAT end to end without expensive legal fees, even if you've lost Faith in the System. If you are not registered for that, there is a link here in the comments. There's a link on the Facebook page to get registered for our webinar next Thursday evening,

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7:30 PM That'll be the next time that I'm here with you or that I am online. We'll be on Zoom. Remember on Thursday that I'm online with you live and I'm looking forward to it. Time to go out and get a little bit of what's left of this sun. I hope you can do the same. Have a fabulous weekend in Strata and I'll catch you all next time.

Bye for now.