

Publication Date: 30 May 2024

YSP Podcast Transcript: 410. Termites, Security Cameras, and Tribunal Costs - Your Questions Answered

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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 to this week's podcast episode. I'm your host strata lawyer, Amanda Farmer. It is great to be here with you this week. It is me. It is the real deal. No handy AI assistant this week. You all met Adam last week. If you haven't caught episode number 409 and met Your Strata Property's, Adam, head back and have a listen to what Adam had to share last week. Thank you for the notes in my inbox, comments on our socials about Adam.

This week, something new once again for the podcast. I'm taking three questions from our list of questions that gets submitted for our Ask Amanda Now sessions. If you haven't heard about these, this happens every second Friday or so live over on the Your Strata Property Facebook page. I put a call out on Facebook in your inboxes to let me know if you have a strata question for me. We always get inundated with questions and the team and I choose one for me to answer over about 15 or 20 minutes live on our Facebook page.

Now, many of you I know are disappointed when your question doesn't get chosen. Last Friday, we didn't have an Ask Amanda Now session. That's because I was taking part in a meet-the-press event. The day of meeting journalists from across Australia getting to know them and making sure that they know about you and your strata stories so that they might be able to do their bit over the coming year to bring these stories to life, bring them to the attention of the wider world.

Some of you have reached out to me and let me know that you'd love for TV media, print media to feature your story. You might be seeing some of those coming out in the near future. If you do have a story that you think would be interesting for the media. Do reach out to me if you haven't already, you can drop me an email at amanda@yourstrataproperty.com.au. So that's what I was doing last Friday. I wasn't able to duck out and visit you live on our Facebook page. So we didn't have an Ask Amanda Now session.

I don't want you to miss out. So I have dipped in to the ask Amanda now spreadsheet where we keep all of these questions. I've gone back a few weeks and picked out three really great questions that I'd love to answer for you now on the podcast. I'm usually looking for questions that when I answer them, I know will be of help to many people, not too specific to your own situation, the types of challenges, and confusions that are likely to be common across a few buildings. These three questions are definitely representative of that. I will get into them in detail. But the summary of the three questions is this.

Firstly, can the strata manager represent committee members at the tribunal? Secondly, is it legal for a resident to have a security camera installed on their property? And finally, I will answer the question, who's responsible for the termites? Great questions. We do from time to time get some messages on our Facebook page asking, how do I get my question featured? When is Amanda going to be back here live answering questions?

I do try to be live on our Facebook page every Friday. One week we will schedule in a longer chat. We call that a Friday live. I'm often looking at the media stories of the week that may have mentioned our strata world. Sometimes I'm bringing you a case hot off the tribunal or court press. And always, I like to find time to answer your questions.

Other weeks, we have our Ask Amanda Now session where you can submit your question and cross your fingers and hope that it gets chosen to be answered. The best thing you can do to stay in the loop on all of that is to head over to our Facebook page. Just search Your Strata Property in the Facebook search bar. You'll find our page there. It's a public page. You can click the button to like or follow the page and Facebook will let you know when we are going live.

We usually schedule that. If not the day before, a few hours before we're due to go live, there'll be a notification there on Facebook.

We also let you know by email. Everyone who is on our mailing list gets an email to their inbox on a Friday. And usually by then I can let you know what we're talking about in the live session as well.



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So if you're not on our mailing list, head over to the homepage of the website, yourstrataproperty.com.au. You can scroll down all the way to the bottom and you'll see a form there to fill in to join our mailing list. That way you won't miss a thing. So heading over to our three questions for today. Firstly, can the Strata manager represent committee members at the tribunal?

Now I've got a little bit more detail for you. This question has been asked by Veronica and Veronica said in her note to me, hoping to be featured on Ask Amanda now, "We've lodged an NCAT application as a result of inaction after a mediation. The strata committee has asked the managing agent to represent them at a cost to be funded from our admin fund. This is a small complex, less than 10 units." The committee is made up of two owners and Veronica tells me the committee members are the respondents to the tribunal application. Veronica asks who is responsible for paying the managing agent to represent them? Is it the two committee members or can this actually be funded from our admin fund? Really interesting situation, Veronica.

The first thing that I would check is precisely who is the respondent to the application. Sometimes when owners are filing applications in the tribunal they want their owners corporation, their body corporate, their building to do something to meet a legal obligation, to fix a problem on the common property, to correct an error at a meeting. And in those cases, the applicant should list the owners corporation as the respondent to the application in New South Wales, that legal entity that looks after the common property that administers and manages the strata scheme for everybody's benefit. That legal entity is called the Owners Corporation. And most of the time it is the owners corporation that is the correct respondent to an application being made by a lot owner.

What I'm reading here in Veronica's note to me is that possibly the two committee members are the respondents to her application. In my experience, that is unusual. And sometimes when committee members are listed as respondents in their personal names, that needs to be corrected. And the tribunal points that out to the applicant at the first directions hearing, the first appearance before the tribunal.

The tribunal member is likely to say, Are you sure these two committee members should be listed as respondents in their own names? Do you mean to list the owners corporation? It would be an unusual circumstance where the two committee members are the correct respondents to an application. It really depends what orders you're seeking, but I suppose if you were seeking orders under section 238 of the New South Wales Strata Schemes Management Act, that's an order to remove a strata committee member from their position. In that case, you would be listing the committee members or committee member in question as the respondent to your application.

It's difficult to imagine another situation where you might be suing a committee member in their personal name. Maybe the committee member is breaching the by-laws and you want them to comply with the by-laws, then they would be the correct respondent to your application. But most of the time it's going to be the owners corporation who is the correct respondent. Turning now to Veronica's specific question. Let's say it is the owners corporation who is the correct respondent to the application and the strata manager is intending to appear at the tribunal on behalf of the owners corporation with the strata manager's additional costs for that service being paid by the owners corporation.

Now that is legal. In my view, there should be a strata committee meeting resolution or even better, a general meeting resolution authorising the strata manager to appear on behalf of the owners corporation at the tribunal and authorising the owners corporation to meet those additional costs. The strata manager will be charging no doubt their hourly rate for that additional and out-of-the-ordinary service. If that proper authorisation is in place, then yes, the Strata manager can appear for the owners corporation and the owners corporation pays their fees from its administrative fund. And in a small building, that can be a little bit hard to swallow for an applicant who is also contributing to that fund.

Essentially, they may feel that they are paying for their opponent's representation. That is something that the New South Wales legislation recognizes. And we have a section in our act section 104 that provides in the case of a lot owner being successful in litigation involving their owners corporation, the owners corporation must not recover any of its costs and expenses of those proceedings from the owner who is successful. So as an owner, it is often the case that you do contribute to the case that's being run against you or the defense that's being put up in response to your application until you are.

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And if you are successful in the proceedings, then there will need to be a calculation carried out to work out what your contribution to those costs and expenses has been and that amount should be refunded to you. I know some communities that end up simply crediting a lot owner's levy account in that same amount. So that in that way they're being reimbursed for their contribution to their opponent's case. If Veronica, you are correctly proceeding against two strata committee members and they are the correct respondents to your application, that makes this scenario a little bit more complex.

The two strata committee members themselves are not the owners corporation and the strata manager can and should only be accepting instructions to act on behalf of the owners corporation. But we do have an interesting section of our legislation in New South Wales that shifts the liability of strata committee members, should something go wrong, shifts that liability over to the owners corporation. That section is section 260, and that section provides that as long as strata committee members are acting in good faith for the purpose of exercising their functions.

If they end up being found to be responsible for any action or inaction that responsibility or the legal word is liability attaches to the owners corporation. It doesn't attach to them personally. So that's why sometimes we see strata committee members who might be being sued in their own name, able to access legal defence cover through an insurance policy, especially if they have office bearers liability insurance policy. And it could be a roundabout way to legally get the strata manager involved in representing the committee members.

The question, as you would have heard me say a moment ago, is whether the committee members are acting in good faith, because committee members who do not act in good faith are not able to access the protection that Section 260 provides. So a few layers to that one, Veronica, part of my answer prefaced with it depends. But a good one for us to be hearing about and thinking about especially when it comes to making sure you have listed the correct respondent to your tribunal application. If you're tuning in, Veronica would love to get an update on that one. Let me know how you went. If you've progressed down that tribunal track.

Moving on to our second question for today. This one comes from Suzanne and Suzanne says she has a question regarding security cameras. Suzanne is also in a small complex. This is a townhouse complex and her next-door neighbour has installed cameras on her property. That is the next-door neighbour's property without permission from the strata, says Suzanne. One of those cameras faces into Suzanne's yard and their new strata manager has tried on numerous times and at numerous meetings to get a copy of the recording so that Suzanne could see exactly what it is that this camera is looking at.

The neighbour with the camera installed will not provide the footage. Suzanne says it was supposed to go to mediation, but that mediation was cancelled by the lot owner at the last minute. How do I, ask Suzanne or our strata manager, proceed? As this is affecting my privacy and the enjoyment of my property. Is this legal?

Well, Suzanne, you've said here that your neighbour has a security camera installed on her property. This is a really key point. It is essential to find out whether the cameras are on common property or lot property. Any addition to the common property, especially a security camera is going to need the owners corporation's approval. And depending on any specifics that you might have in your by-laws, it's likely that approval will need to be given by way of special resolution at a general meeting. So your neighbour should not have affixed anything to the common property without the approval of the owners corporation. But it's sounding like you seem to think Suzanne that your neighbour has this camera installed on her property, on her lot property.

Interesting that you have said this is a townhouse complex. If the camera is installed on the exterior of your neighbour's townhouse, that could still be common property. It depends on how the boundaries of the strata plan are defined. In order to work that out, you do need to get a copy of your registered strata plan and have a look at whether there might be any notations, any words written on that strata plan that make it clear whether the external walls of each townhouse are common property or lot property. It's not uncommon for townhouse complexes to have notations on their registered strata plans that make the exterior of the individual structures, the individual townhouses lot property.

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Otherwise, the exterior of a building, if we're talking about a multi-story high rise, the exterior of a building is usually common property. It can be a little bit different in townhouse complexes. So you might've already worked out Suzanne that this camera is installed on your neighbour's lot property. And that's why you've framed it that way in your question. If that's the case, then your neighbour is allowed to have that camera. Assuming that the camera is only picking up vision, it's not picking up audio, even though that camera is looking into your property, looking into your home, looking into your yard, that is legal.

I actually had a client some years ago who sought advice from me on this subject and I gave my opinion, which was along those lines. And we then took the further step for an abundance of caution to get an opinion from a barrister who is an expert in this area who went through the legislation. The Surveillance Devices Act in New South Wales is relevant legislation. Also looked at some very old English court cases. And the advice given on that occasion was indeed that a camera installed on your own lot property, even if it's looking at somebody else's property in the strata plan, is legal and does not require the permission of the owners corporation.

That is a common question. Security cameras, starting point is always what part of the property is this device affixed to? Is it common property? Is it a locked property? Also make sure that you're having a look at your own registered by-laws for your building and making sure that this issue hasn't already been covered in your by-laws, if it has, it may change that general position that a camera on lock property is allowed without permission. But in my experience, I don't see many by-laws that address this issue so directly. Hope that answer is helpful for you, Suzanne.

Finally, a question from Denton. Denton tells me that he is the chair of a committee of a medium-sized residential strata building. Termites have been discovered in one of the units in the buildings, the termites have attacked the floor, the skirting boards, the door frame inside the unit. Denton asks, should eradication of the termites be an owners corporation responsibility and cost? Who should pay for the repair of the termite damage, the owners corporation or the owner? Can we claim this under the building insurance policy?

Great question Denton, I've certainly had this one before. It is tricky when you're talking about a multi-story apartment building and looking at the number of units in your building. It is a mid to large one. It's tricky to understand how termites in one unit could be an owners corporation responsibility. But here's the thing. It is very likely, unless a resident has brought them in in their backpack, unless a resident perhaps, it's being a little vindictive, wants to punish their neighbours or their landlord and has decided to bring termites in. And unless you can prove that, then the termites have come from outside the property.

And the fact that termites have been able to, allowed to manage to find their way inside the property, through common property, that's going to be an owners corporation problem to fix. And in my view, it can fairly easily be said that the owners corporation has failed to properly maintain the common property. It has failed to recognise, to prevent, to deal with this termite infestation. That is a breach of its duty under section 106 in our New South Wales legislation. And it is for the owners corporation to deal with this problem at its cost.

Getting rid of the termites should be top priority for the owners corporation before damage gets worse and perhaps spreads to other units if it hasn't already and paying for repairs to the property, whether that is the timber joists under the floor, which are common property or the skirting boards and door frame and floorboards that are inside the unit, that damage has been caused by the termites, which is an owners corporation problem, the owners corporation should pay for the repair of that damage.

As for whether it can be claimed under the building insurance policy, I don't know the answer to that, but good idea to ask your broker or ask your insurer if this is something that would be covered. I'd love to hear from the brokers and insurers out there or even the committees, the strata managers who have had to tackle this problem. Is this something that an insurance policy would usually respond to? Do you need a specific inclusion in your policy to be able to cover termite damage? I imagine it's reasonably rare in a large multi-story building, not so rare perhaps in older townhouse-style or villa-style developments that have more residences closer to the ground.

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But certainly, a problem that should be, needs to be dealt with swiftly before any other owners and residents suffer from these termites, assuming they are live termites.

Those are our three great questions for today. They were questions submitted for our Ask Amanda Now session and I've managed to sneak them into a podcast. If you do submit a question to be answered live over on our Facebook page on a Friday afternoon and your question is not chosen. Never fear. There is another way to get my legal eyes, legal brain on your question.

The members inside our online membership community are posting their questions in our QandA forum everyday. I'm over there reading those questions, answering them in writing for our members, directing our members to further resources, to templates, to cases that they can rely on to get through their particular strata difficulty. If you're not a member inside our online community now is a really good time to join us.

On the 1st of July 2024, the price of new memberships will increase by at least 18%. If you are a current member, this does not affect you and you will have received an email from me confirming that.

My promise to current members is that your membership will always remain the price that you came in on. It will not increase even though the value of our membership increases every month and the price for new memberships certainly does go up. My commitment to current members is that your membership price is always secure and does not change. The current price for a month-to-month owner membership is \$67 a month. On the 1st of July, that price is increasing to \$79 a month. Doesn't affect current members, but the reason I'm telling you about it now is that if you are thinking of joining us inside the membership, it will never be as cheap as it is today.

If you are a member and you have a friend, a neighbour, a colleague, a family member who you know will love this community and will benefit from all that we share inside the membership, do encourage them to join before the 1st of July. That's 2024. So they can get the current pricing before it does go up. If you're paying a monthly membership, over the course of a year, that's a \$144 saving. So it is worth getting in now before that price increase. The place to send anybody who you know would like to find out more about membership is stratamembership.com.

Our pro membership pricing is increasing as well. Pro memberships are for our strata managers and our strata committees. The price is not increasing for our current members, only for new members from the 1st of July. Our pro member pricing is going up by 20%. So if you've been wanting to get your committee inside the membership or your strata manager or your strata manager colleagues. Do reach out to me now and we'll talk about your best value option for a pro membership. Just make sure you do that before the 1st of July so you can get that 20% savings.

That's it from me this week. It's wonderful to spend time with you. I hope you have a fabulous week in strata and I look forward to catching you all 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 by the show notes at yourstrataproperty.com.au.