

Friday AAN: 19 July 2024

In today's "Ask Amanda Now" session, Amanda answered Therese's question: can a proxy holder nominate themselves for a committee position? PLUS an invite to an IN-PERSON event Amanda will be speaking at for one lucky group of strata owners next week. Find out if that includes you!



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Hi there and welcome to ask Amanda Now. This is our short Friday afternoon session where I am going to answer one strata question for you chosen from the long list of questions that have come through today in my inbox here on the page. Lots of you needing answers out there. This week. We will get to the one question that I have chosen to answer and we'll absolutely get to the answer to that question here today.

How should we? Kinstrata BEan, if you were with me here last Friday, you would have heard that I was madly prepping for an appearance at NCAT, the New South Wales Civil and Administrative tribunal. I had my folders laid out on the floor. Barnaby, one of my dogs, was helping me with that prep. The folders have, as you can see behind me, they've graduated to the lounge and that's because we've been and come back from NCAT and I'm going to say successful outcome.

The case was actually settled. Happy client I had on Monday, but it was a long day. We were in the tribunal before the tribunal member for the best part of the day and then commenced and completed some settlement discussions right up till the evening, about 08:00 Monday night, we finished up with a settlement that everybody could live with. Good result. If you have heard me, some of my education around litigation in strata and going to the tribunal, you have probably heard me say that an outcome that you agree to, that you negotiate, that you can reach with your opponent, is almost always a better outcome than leaving it up to the tribunal to decide.

So all of this sitting behind me now on the lounge is getting ready for the shredder, which is always a nice feeling for those of us involved in litigation. Clear the folders and clear the bookshelves a little. Thank you to many of you who have been talking to this week, who have said, Amanda, we know you're in the tribunal. Hope everything went well. Indeed. Thank you for your support and lots of you in my inbox responding to a call out that I put out.

I feel like it was only yesterday, it might have been Wednesday. Letting you know that I will be speaking at an event that Professor Cathy Sherry is hosting. Professor Cathy Sherry from Macquarie University. The event is happening next Wednesday and it's all about how we might plan better for those of us who are living in and looking into buying into strata. How do we do strata better, how do we build better buildings?

How do we set communities up for success right from the planning stage? So this is an event where there are going to be planners, there are going to be architects, there are going to be politicians, there are going to be bureaucrats present. And I, and part of what I've been asked to contribute to the event is what do we see on the other side of these new developments?

How do we see communities coming together, perhaps not coming together when they have purchased, owners have purchased off the plan, getting to understand what strata is, are there some things we can do in the setup of these communities to ease that pain and to make that burden a little lighter for those who are inheriting this structure? So on Wednesday, I posted here on the page and also sent an email out to everyone who's on our database asking you to answer a few questions for me about what you think good structures are, why some communities seem to be headed for disaster right from the get go.

And so many of you have spent time, and there's a few questions that I answer, and you have taken the time to intelligently articulate your thoughts, your feelings, your answers to those questions. They're absolutely all being collated, and I'm really excited to deliver the summary of that, the results from those questions to the audience next Wednesday. And I am sure I can absolutely bring some of those results here to you next Friday live as well.

Does that sound like a good idea? Let us do that. Many of you coming in, we are rocking and rolling here for our ask Amanda now session. Thank you for the hellos that are here live. Hey, Sean. M. Hello. Hi, Cole. Hello to you. Vivian is saying, is there a cutoff to supply some info for next week? Is there a cut off? Shoot it through, Vivian. Shoot her through whenever you can.

There is a little bit of work in collating all of the answers that have come through, and at the moment they're all sitting in a spreadsheet. Anything that you offer to be relayed next Wednesday will be kept anonymous for sure. But what we're looking for in

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the data are some trends. You know, one of the questions was, what do you think is the ideal size for a strata scheme?

How many? Lots. So some of you have told me what you think that is. And when we feed that data into our very smart computers, it can come out with an average answer that you have given me. That's the kind of thing that we're doing with that data, and that's probably unlikely to happen until early next week. So if you still haven't answered those questions and you've seen that message in your inbox about the event that Professor Kathy Sherry is hosting, I think the subject line was, how do we do strata better then feel free to dig that up over the weekend and send me through your thoughts.

If you don't mind putting your name to your thoughts, you can also answer here on the Facebook page. You'll see that post a bit further down with those questions there asked. And I know a number of you have already posted your answers there for me. Thank you very much. Hey, Margaret, saying thanks for your help and have a great weekend. Weekend to you too, Margaret. Sean's saying one lot, one lot strata scheme.

Sounds great. Yes, that's the one that you own, Sean. Yes. Not sure we have a strata scheme if we've only got one lot. Bill and Ben is here saying hello. Good to see you, Bill and Ben. I've mentioned that event next week, which is an event that if you're a startup professional generally, or someone involved in strata planning, an architect, someone involved with land register, registry services, you might want to come along to.

If you are an owner, strata owner, strata manager, even building manager, there's another event happening next week. I'm going to be a busy gal again next week. There's an event happening next Thursday. I'm going to tell you more about that after I have answered today's ask Amanda now question. So we're going to get to that one. It is an event for a lucky, I'm going to say lucky group of owners, resident strata managers.

I will let you know all you need to know to work out if you're in that group and if you can come along to that live in person event that I'll be speaking at next Thursday. Hang on for that one. Elizabeth is saying, I wish I knew how to get my strata manager to respond to my emails just ignored. Yeah, Elizabeth, Iowa saying, as I think you might have heard me say before, attach them to a motion, put them on a meeting agenda.

That's one thing that they have to do in New South Wales, at least. If you ask for a motion to go on a general meeting agenda, it must go on there. Attach your emails. The motion is that my questions in the attached emails be answered, that the strata committee directs the strata manager to answer the questions in my attached emails. Give that one a go. Christian's here saying, hi, Amanda, love your work.

Thank you, Christian. I've been learning a lot from you in a short amount of time. That's what I like to hear. I've been doing a fair bit of media lately as well, which some of which you would have seen on the page, guest on podcasts, chatting to print journalists, chatting to tv journalists, and just in the last couple of days, I think we're up to three. The third journalist that I've chatted to, and I am constantly saying how important it is for those who are thinking about buying into strata, those who are new to strata, how important it is that they have access to this kind of information to be able to learn as much as possible about the ins and outs of strata living, which is so inextricably connected to strata law.

Absolutely. And how that just makes everybody's lives, from strata manager to tenant, easier in strata, when you understand a bit about what's going on. So good to hear, Christian, that tuning in here is helping you learn quickly, Zlata saying even listening motions are ignored. Strata industry is rotten to the core. Good to have you here with us, Zlata. I know you are always here, ready with your opinion.

Okay, we're going to do it. We're going to move into today's question. Let's do it, Rochelle and Mina, and bring up our chosen one chosen question to answer today. It is a question from Therese, and Therese is asking, can a proxy holder nominate themselves for a committee position? Great question. I'm assuming that Theresa's in New South Wales. If you are tuning in, Teresa, and you want to let me know otherwise, please do here in the comments.

But I have prepped my answer with reference to our New South Wales legislation, which is the state in which I practise as a lawyer.

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Teresa's question was a little bit longer in my inbox. Theresa said, if an owner has a proxy for the AGM, but the owner themselves is not in attendance at the meeting, can that proxy holder nominate themselves as a committee member or do they need to be nominated by another owner who is not themselves nominating for committee membership?

So just the wording in that question tells me that Therese knows a little bit about eligibility for election to a strata committee in New South Wales. Theresa said at the last two agms, the proxy holder either self nominated or was nominated by another owner, but that other owner had also self nominated for the committee. And both of these people were accepted, says Therese, by the strata manager, who I imagine was the person chairing the meeting.

The nominations were accepted and both of those people were then elected to the committee. Therese says, if this happens again at the next AGM, what can I do at the meeting? So already some experts chiming in. Shaun is saying, do a paper nomination beforehand is the best way. Yeah. So let's start there. When we are nominating for the strata committee in New South Wales, we can do that either orally at the meeting, or we can do that ahead of the meeting by submitting a written nomination.

And if you are attending the meeting as a non owner and you are going to be a proxy holder often the way that I attend meetings, I have a client who appoints me as their proxy holder when I attend for family members, sometimes including when they want me to be on the strata committee, I'm attending as a proxy holder, but I am nothing. The owner if you're going to send a proxy holder who is not the owner and that proxy holder wants to be elected to the committee, then they do need to be nominated by someone who is an owner.

And as Sean points out, the best, easiest way to do that is to nominate them in writing before the meeting. So the owner who is appointing their proxy holder and wants their proxy holder to be eligible for election to the committee, that owner can fill in a written nomination form ahead of the meeting nominating that proxy holder, because that is indeed the law in New South Wales. I'm just looking over at my act.

The relevant section is section 31 in our strata schemes Management act that tells us who is eligible for appointment or election to the strata committee. It does include a person who is an owner of a lot. You can self nominate if you are an owner of a lot to the committee, but it also includes someone who is not an owner. People who are not owners can be nominated for and elected to the strata committee, but they must be nominated for election by an owner of a lot.

As I've said, you can do that orally at the meeting. If there's an owner in the room who's happy to support the nomination of a non owner proxy holder or non owner, full stop. Who's at the meeting who wants to be elected to the committee, or do that in writing ahead of the meeting and make sure that the chairperson has a copy of that written nomination. But here's the kicker, and this is what Therese was pointing out in her email to me.

If a non owner is being nominated for election to the committee, they have to be nominated by someone who is an owner, but that owner who's nominating them can't themselves be seeking election? Can't themselves have nominated for election. And this is where I think Theresa said things are going a little bit wrong. In her building, there is a non owner proxy holder who's nominating themselves. That's a no no not allowed.

And at other meetings, this non owner proxy holder has been nominated by another owner tick, but that other owner has themselves nominated for election as well. That's across. That's a no no. So have a look at section 31. Subsection 1D is the relevant part of our strata schemes Management act for the answer to Therese's question. And as for Therese, what you can do about this? I think pointing out that legislation to your strata manager, I think you've said the strata manager is the one who is accepting these invalid, I'm going to say nominations to the committee, drawing that legislation to the attention of your strata manager, reminding the strata manager, hey, this proxy holder is not an owner and they have been nominated by an owner who is themselves nominating for election.

So pursuant to that legislation, that's not correct. And perhaps recognising that maybe what's done is done, I'm going to say, practically speaking, perhaps not legally speaking, maybe there could be a challenge to the validity of this election. But if you're going to take the practical point of view and say what's done is done, I'm not going to worry about this until the AGM next year.

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Having that chat with your strata manager, sending that email ahead of next year's AGM and saying, look, I've since learned that this is the process.

Please, I ask that that be followed because it hasn't been followed in the past. Section 31 in our strata Schemes Management act. Scrolling back up to the comments here, Elizabeth is saying, if the owner is a company, who is it? A director of the company. Yeah. So a company owner, corporate lot owner may send a representative of their company to vote at general meetings and they might do that by way of a proxy, signing a proxy form that appoints this person as the proxy holder.

The company may then give a written nomination for that person to be elected to the committee. That's fine. Another way or the other way that companies vote at general meetings is to appoint a company nominee, and that is someone who is named on the strata roll as the company nominee. And then that person can vote in their own right, in their own name at a general meeting as the company nominee.

They don't need to have a proxy as well. So two different ways there that companies corporate owners might be able to vote at meetings. Yolanda saying, is this relevant in Queensland too? I don't know. I don't know, Yolanda. If we have any Queensland experts tuning in here, they might be able to point you in the right direction. But without going and digging through the relevant legislation in Queensland, which is often something that I'm doing for our members inside our online forum when our Queenslanders are asking questions like this.

Without doing that, I can't answer you with confidence. There. You landed to say whether or not these, these answers are relevant in Queensland. Megan's saying hello from very chilly beg valley that is chilly around the country at the moment. Good to see you, Megan. Hey, Maureen. Sean is saying a company nominee needs to be appointed by the company. There's a special process for this. In the same way, Sean, that a proxy form that is signed by a company appointing a proxy holder who may be a representative of the company, maybe a lawyer, maybe someone else entirely, the proxy form needs to be very carefully filled out by the company as well, and we have to look at the legal way in which companies sign documents.

Carolyn, saying, I thought that was only for two owners from the one lot nominating. The nominating party. Cannot be nominating themselves. Has not had the situation. Had not, sorry. Have not had the situation described today. Yeah, Caroline. So, Carolyn, I know that you are an experienced strata manager. Yeah. I'm having a look at section 31 one, subsection D. An individual who is not an owner of a lot in a strata scheme may be nominated for election if the person is nominated for election by an owner of a lot who is not a member and is not seeking election as a member of the strata committee.

So definitely have a look at that one if that one's new to you, Bill. And Ben says, don't you just love it when the owners need to school the strata manager? Yep. And I see it so often, and I see this is probably at the more complex end of what strata managers don't know. I'm going to say, I'm going to let them off the hook a little bit here.

There are some really basic things that I have seen go wrong from the strata management perspective, which is concerning. I have to say, Bill and Ben, all the more reason why it's so important for owners themselves to be across these issues. Should they have to be? Probably not. But this is where we're at in terms of the knowledge, experience, understanding of our strata managers. Frank is saying owner nominating needs to be financial.

Yes, I think that is correct. Correct, Frank. And I'm just looking. I think that's in our other. Is that in section 32, perhaps? Section 32, an owner of a lot in a strata scheme, who was an unfinancial owner at the date notice was given of the meeting and hasn't paid up their amounts, is not eligible for appointment or election to the strata committee. Is a person who is nominating someone else?

Does a person who's nominating someone else need to be financial as well? Not sure there's a short answer to that, but I know who's going to let me know. Shawn McNamara is going to let me know. Does the owner who is nominating a non owner need to be financial in order to make that nomination? Can't see it there in my quick look at section 31 and 32, but can we answer that one for Frank or I will come back around and answer that one for you, Frank.

Okay, scrolling down. Lots of questions about company nominees, affiliate company nominee forms, and proxy forms. It's certainly

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something we've covered on the podcast before. I think we've covered it here in live previously as well. And I will remind you how you can continue to get my support on these issues if we're not diving deep enough here for you. In our live chats, Daryl's saying, I thought the owner nominating needed to be financial and that's one of the changes from December last year.

Yep. Could well be right there, Daryl. We'll definitely confirm that one. Sean is saying, I'd agree with Michael T's likely position that owners should be informed on these matters, not that they shouldn't need to. The ultimate obligation is on the owners. Oh, totally get it, Sean. But here's the thing. What are you paying for? You know, if you're an owner who is contributing to the costs of professional strata management, and if you agree that the role of the professional strata manager is to be able to assist in the conduct of a compliant meeting, then I think the strata manager needs to be getting this right if they're acting in the position of chair or they are giving guidance to a chair.

This legislation is complex. I'm not sure that it's great that owners find out this information and take the opportunity to arm themselves and to educate themselves, as I am always, always advocating for. But I think if you're paying, part of the role of a strata manager is to be that professional there to have the answers to these questions for you. And I have to say in my legal work that I do for owners, I do see a lot of gaps there in that service.

Okay. Darryl saying, I don't think the owner needs to be financial to nominate. They just can't nominate themselves. I think you're right. Daryl says, sean, just have a look at, yes, they have. Yes, they can't nominate themselves if they're unfinancial, but someone else can nominate them, I think is what you're saying there, Daryl. Great. Okay, I'll come back to Frank, to you, Frank and I will answer that question directly and thank you for the assistance that's coming through.

In the meantime, I think that's the answer to Theresa's question. I think we have covered that one. We sparked a whole heap of discussion that is happening here in the comments and some other topics that are coming up. I am very shortly going to wrap up because this is our ask Amanda now session. It is a shorter session. Before I do that, I'm going to let you know about this live event that I have teased to you at the top of this chat and also in my email this afternoon.

I will be back in Sydney next week at Professor Kathy Sherry's event on Wednesday and then at another event on Thursday, the 25 July. I have been once again invited by the City of Canada Bay Council to speak at their buildings network information session. These are sessions that serve as platforms for owners, committee members, building managers, strata managers to share their challenges and to exchange ideas. It is wonderfully put on by City of Canada Bay Fantastic catering.

That was my big takeaway from the march session that I spoke at. It is all happening on Thursday, the 25 July from 05:30 p.m. due to wrap up at 07:30 p.m. there is a link for City of Canada Bay residents or strata managers and building managers who are working with buildings that are in the city of Canada Bay local government area. Free event for those residents and those professionals to attend.

An eventbrite link here for you if you'd like to go ahead and register. I have been asked to speak about common issues plaguing our apartment residents, specifically illegal renovations, how to manage pet ownership, parking problems, noise issues. There was a bit of a long list that came through in this request. Amanda, can you cover these things? And I never shy away from a challenge, said, sure, let's do it.

Let's spend the time talking through those issues and of course always leaving plenty of time for Q and A. So some live Q and A will be happening there at that event for the city of Canada Bay residents. If you're not sure if you're in or you're serving that area, last I checked, we're talking about Abbotsford Breakfast Point, Cabaret, Canada Bay, Chiswick, Concord, Concord, West Des Moines, five Docks, Liberty Grove, Mortlake, North Strathfield, Rhodes, Rod Point, Russell Lee, part of Strathfield and Wurimba Hope.

I said that correctly. So if you are in strata in one of those areas, if you know someone who's in strata in one of those areas, let them know about this event next Thursday evening kicking off at 05:30 p.m. i believe if you click through to that link that's here in the comments, that eventbrite link, you'll see the location. I think the location is in Concord, different location to where we were in March.

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I'm seeing Andy say I have my ticket, hoping to see you there. You are absolutely going to see me there. Absent any misadventure or misfortune. I am booked. I will be there. I will be prepped and ready to go. That link is there for you. There is a few long questions that are popping up here in the chat which I'm not going to be able to get into today.

As always, as always, there are more questions than we're able to answer in these sessions. If you are a member of the your strata property online membership community, then jump on over into the members Q and a forum. You're all keeping me very busy over there. I'll be back in there this weekend for sure. Pop your question in there. You will have my detailed answer in writing. I'll link you to the legislation.

I'll link you to the relevant cases. We can have a bit of back and forth with those further questions that always come up once I have answered something briefly. If you are not a member, then come on over and join us. You can join our online membership community right now for as little as \$79 a month. There's no lock in on that, so come and give us a try.

Have a poke around, see if what's in there is helpful to you as it has been to so, so many other strata owners, strata managers. Over the eight years that we have been operating this membership. You get access to a whole lot more than just the Q and a forum, but that is a great place to start. The place to go to find out more about membership and to jump right in.

Join us now is stratamembership.com. so good to see you here today. I'm going to scroll back around to those comments and particularly frank, your comment about committee members unfinancial nominations. Let's clarify that one for you. I can see Shaun still helping out with that one there, which is awesome. I really appreciate you experienced strata managers tuning in and helping out our audience. I'm going to sign off. Keep warm, have a fabulous weekend in strata.

Yes, I will be back here next Friday and I have promised to share a bit of the findings share some of the findings from this impromptu survey that I am running ahead of Kathy Sherry's event. How do we do strata better let you know what we come up with on Wednesday. Thanks for joining me. Catch you all here next time. Bye for now.