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YSP Podcast Transcript: 468 - Levy recovery confusion: untangling NSW's new strata laws

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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 with me today is Reena Van Aalst from Strata Central. Hey Reena.

Reena Van Aalst: Hi Amanda, how are you?

Amanda Farmer: I am great. We were just chatting off-air about how many challenges we have at the moment. So it's great to be here to share a couple with each other and with our listeners. We have new legislation in New South Wales already. My inbox is filling up with questions and concerns about that. We'll talk a little bit about that today. What's been challenging you this week, Reena?

Reena Van Aalst: Yes, I've actually had a few challenges with building managers, and I'm sure that any of those that are listening maybe to think more about this aspect that I'm going to talk about, which is providing quotes to the managing agent. So what we're finding is building managers, not all of them, some of them are really good, and they send their quotes either in advance of a meeting or as they're received. But a lot of them forget that the records actually are held by the owners corporation in our possession as a managing agent, as the incumbent.

And we've had a situation now where five years ago we had a building manager who's no longer there anymore, and he completed an audit of the fire doors to see whether there's any asbestos, and some of the fire doors were replaced at the time. But now that we're having to revisit the annual fire safety statement, and we also have a fire order at the moment on this particular building, the new contractor wants to check every single door. But I've said to him, "Hang on, they have, some of them have been replaced, and they should have tags."

But again, because we don't actually have the quote and the register of the doors that were completed, because those records obviously were not handed over, or even if buildings have non-proprietary software like say MYBOS or BuildingLink or any of those building management software tools, it's incumbent on the building manager to actually upload the documents into that.

So even if a lot of buildings now because of being burnt in the past by building managers not handing over records or I've got one at the moment, they've been the manager I think for at least 20 years as far as I can recall and we, we've got issues now and they won't hand over the emails and nothing I think in their contract even compel them to do so.

So, again, it's one of those things where it's not like the Strata Schemes Management Act that compels strata managers to hand over all the records to another agent. There's nothing in the legislation that compels building managers to hand over records in their possession, which belong to the owners corporation. So we are now faced with having to do a whole another audit and check at a huge cost because those records were not provided to us.

And the problem, I think, as an agent, when you don't know what's being done or what quotes are being obtained or reports are being obtained by the building manager, then you don't know what to ask for when you don't know what's going on. And it's only because I remember that I paid an invoice to this contractor that, and I went and located it from five years ago. I thought, "Hang on, that's right, they did do that."

When you have sort of certain memories, and again, that is also incumbent on the manager being the same manager in the process as well. So I think it's a big challenge, I think, for buildings, people doing searches, we don't have all the records at times, quotes. I've got minutes going out, and I haven't been copied in on all the quotes, and I have to wait for the building manager to send them to me so I can include them in the minutes.

And yes it's just becoming, I'm not sure if other managers are going through this process and I know not everyone's perhaps working with building managers but it's I think as these buildings become larger in the building and the state government wants to increase strata living and which is usually going to probably be of a size that may require either a full or part time building manager. They're not going to be just a three-story walk-up. I think this is going to become more of an issue.

I know the legislation that we're going to talk about in a matter, even though we're not going to deal with the building management aspect. Obviously, there's now more responsibility on building managers in terms of their role and their fiduciary obligations to an owners corporation, but I think it doesn't extend to the same. It still hasn't, I think, gone far enough in terms of the record aspect.

Amanda Farmer: Yes, I do want to talk about that and what has changed. I suppose or been clarified or included now in the legislation about building managers. So I'll come back to that. But first of all, this is not the first time that I'm hearing this frustration from a strata manager. And it does come up when that building management contract comes to an end and the incumbent building manager is moving on, their contract's not being renewed, you're bringing in a new building manager, and the outgoing building manager is then leaving with the records of the owners corporation on their software, which they own.

And you're right that it does come back to the contract and the contractual obligation of the building manager to be giving access to records, giving copies of records. I mean, all of this should be. And I appreciate that, sometimes you don't think about these things until the problem arises, be dealt with upfront with the engagement. And that's why it's so important that we're talking about this so that managers and communities that are thinking of bringing on building managers can get some legal advice, get a contract properly drawn up and have that contract address, "Okay, what do we do about records?"

Another way, perhaps, and you might already be doing this in your buildings, Reena, to make sure that these records get to the owners corporation, is to always have, and I see this in the minutes of meetings that I look at, always have a building manager's report to the strata committee. So that every strata committee meeting, there is a running list of things that the building manager is doing around the building, including quotes that they've obtained.

And I don't see why. I mean, yes, it's going to be a long list. The building managers' reports that I see, even if they're monthly, are often very long. There's always action items that are ongoing. Some things get closed off, some things get added and then attachments to that report. These are the quotes that I've obtained within the last month, and I'm seeking the committee's approval for that if the building manager is not otherwise authorised to approve them. Is that a way that a community may be able to maintain? Or..

Reena Van Aalst: Yes. It's a good suggestion, Amanda. So, in this particular experience that we had with this building manager and I've got with others is that it's on their report, like they'll say, "Quotations obtained for carpet cleaning from Sapphire, \$3800," and it's like, "Well, where is the quote? Like, where is the source document?" So some people will have it if they, some people, if they're using, say, MYBOS, or they have a link and then because they upload that into the report.

So you press the link and the quote comes up, and obviously, we do all the downloading, but half the time, the report is coming after the agenda has been issued. So some of those items aren't even getting to the agenda, but have to then be added on as an extra, which is not really ideal if it's a large capital expense. But the other thing that we're doing now as a result of this particular instant and others is that we're recommending to the buildings and they're adopting this is that we set up the building manager's email address.

So it's not going to be their proprietary one, where the name at the buildingmanagement.com.au, it'll be like BM at you know the building name. So it's either through like an Outlook, or through some other. Or we set up the domain, so whatever comes through to that email address. So that's I think the only way that we've found to sort of safeguard and safe proof the process where every email because we've unnecessarily deleted which I think again we found one of the building managers when deleted some emails.

Amanda Farmer: Right.

Reena Van Aalst: But this was actually the company hadn't changed. There was a personnel change, and there was, like, conflict between, I think, the building manager and the owner of the business. So they deleted a lot of stuff. But you don't know that they've deleted stuff until it's sometimes too late. Because I'm not sure if when you delete things of how long it stays in a deleted..

Amanda Farmer: Yes. It disappears. That's a good idea - that email address, and even if the building manager doesn't specifically want to use that one, at least copying everything to that email address or setting up a rule in your email service provider that every..

Reena Van Aalst: Now they have to use it. They don't get a choice

Amanda Farmer: And returning to the contract and the ability to deal with this at the stage of engagement. Having a simple contract clause in there that requires the building manager as part of their duties to every month provide a folder of documents to, maybe you don't want those quotes attached to every building manager's report. And I like the idea of those links, but quarterly or monthly, whatever it is

Reena Van Aalst: Yes. And share it via a link, Amanda. You have a link.

Amanda Farmer: Strata manager can hit download, save those, and obviously, making sure that that's complied with is the trick where the building manager hasn't done that for three months. We want to get onto them and say, "Hey, pursuant to this contract clause, this is part of your duties to quarterly provide us with a folder with all of the documents. You can put that into your contracts.

Reena Van Aalst: Yes.

Amanda Farmer: Just returning to the legislation, there is a new section now in our New South Wales legislation for building managers - Section 70A. It is setting out the duties of building managers or some of the duties of building managers, which include that a building manager must not, without reasonable excuse, fail to act in the best interests of the owners corporation.

Now I think there's probably a good argument there that acting in the best interest of the owners corporation means giving them their records. So put that one in your back pocket. Maybe it's a breach of Section 70A if a building manager is just shutting up shop and saying, "I'm done, contracts over, I'm walking away, including with records that I have created or obtained on your behalf, owners corporation."

That's probably not acting in the best interests of the owners corporation.

Reena Van Aalst: Exactly, Amanda.

Amanda Farmer: Something to be tested, perhaps in the future. Sticking with the new New South Wales legislation as my challenge for this week, I want to talk about the new rules regarding payment plans and the recovery of unpaid levies. Now there's been a fair amount of confusion in this space for our strata managers, even among the lawyers.

I'm putting myself in that group. Some of our listeners may have heard as recently as a Friday live last week at the time we're recording this, I was talking about this new section that requires an owners corporation to first have an order of the court or the tribunal and offered first a payment plan before it can recover its expenses. So it's legal costs that it incurs when it is suing an owner for unpaid levies.

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So that is a new subsection in Section 86 of our Strata Schemes Management Act subsection 2AA. I was talking about it on our Friday Live because I was pointing out that Fair Trading hadn't been talking about it. When you look at Fair Trading's website, summary of the changes, which I said was pretty good, was pretty comprehensive. I was a bit baffled as to why there had been no mention of this very important, I'm saying change to our legislation that is going to impact whether or not and how our owners corporations can recover those debt recovery costs.

As you know, Reena, it can really rack up, can be quite expensive for an owners corporation. Now, it has been brought to my attention and I want to give credit to James Moir of Moirs Law, that's M-O-I-R who has pointed out in a LinkedIn post that this new Section 86 subsection 2 AA is the only section that has not yet commenced out of the amending Act when it comes to this category of changes about unpaid levies and payment plans. When I saw James's post on LinkedIn, and I went having a look at the act and looking at those commencement provisions, it was one of those little tiny carve-outs that said, "No, this one hasn't yet started." So thank you, James, for pointing that out.

And it's led to some questions from strata managers. Well, does that mean we don't have to offer payment plans just yet? If we think that we might be having to recover unpaid contributions down the track? Because, until now, the lawyers have been telling us, "Oh, make sure you offer payment plans or you might not be able to recover your expenses." Do we just proceed as normal and wait for this new section to commence? Do head over and have a look, either at my LinkedIn profile where you can see my comment on James's post, or check out James's LinkedIn post as well.

There's a view out there that this section that is going to prevent the recovery of legal expenses unless you've got an order of the court or tribunal, or unless, and unless you've offered first a payment plan, that this section will only apply where you are seeking to recover your costs alone, standalone costs, rather than where you are recovering the actual debt together with your costs. So James has expressed a view, and maybe the view of others might not just be James's view, that this requirement to first offer a payment plan and get a court order for your costs will not apply if you are going down the usual process of recovering unpaid levies together with interest, together with your expenses.

It only applies if you're just seeking to recover your expenses alone. I don't know if that's what the section means, and we may have to wait and see how it is tested before our courts and our Tribunal. It's another case of, I think, unfortunately, opaque drafting, which we're very good at in New South Wales, giving lots of jobs to lawyers to decide and to argue about what these new sections might mean.

But the bottom line for me is, and the guidance that I'd be giving strata managers and committees that know they have owners who are late in paying their levies, they have levy arrears that they may have to sue for later. I think if you think you're going to end up in that position down the track, when this new section is likely to have commenced, you should be, before you sue, you should be offering these payment plans as a matter of course, otherwise you could.

I don't know if the section is going to be retrospective or how it's going to apply. I think there's a possibility that you could end up in a position where you can't recover your cost if you haven't first offered that payment plan. What do you think, Reena? Have you turned your mind to this? Have you heard anyone else talking about this? It's a little bit convoluted. I appreciate it.

Reena Van Aalst: Yes, well, actually, everyone's talking about it at the moment, to be honest, Amanda, because the fact that is that we've been talking about capital fund plans and owners, corporations kicking the can down the road for repairs and maintenance for many years, and buildings aging and waterproofing issues, et cetera, et cetera. And now we have people that can't pay their levies. And I've always thought that people could always offer a payment plan.

Like most AGM agendas have a motion that allows an owners corporation to consider payment plans. So that's always been the case. I mean, that's not a new thing. So I'm not really sure why you have to offer something that's already been resolved at your AGM when that's always the first thing, when someone doesn't pay their levies after three reminders. And it says, and I'm sure most strata managers have this in their reminder letters that, you know, like, "Please make payment. If you can't, please come back to us and let us know why," etcetera, etcetera.

In terms of payment plans, Amanda, we understand that there's a prescribed form now that has to be used so that people have to provide the information that's on there. Because before people didn't really know what to provide, what to ask for.

Amanda Farmer: So this is about where they're requesting the payment plan.

Reena Van Aalst: A payment plan, yes. So that resolution's been passed by the AGM or any other general meeting. The owner comes and says, "I can't pay my levies. Can I pay, you know, \$300 a week?" or whatever. That goes to the strata committee. We look at that in terms of arrears, the quantum future levies, what impact that will have, cash flow, and the whole scheme, which is, I think, a very good thing because everyone now has to provide the same information.

And it makes it obviously easier for a strata committee to understand and to decide whether or not it wants to approve the payment plan. But I think the confusion has now risen as to the fact that the regulations say that you can't charge the actual owner, the fee that will be decided by the agency as to whether they charge owners corporation or not, which I think, expect they will be charging the owners corporation for that fee.

Amanda Farmer: Yes. A fee for the service of monitoring the payment plan.

Reena Van Aalst: Yes. And so I think there's confusion in that area. So. And I think the confusion, also, about what you mentioned this morning, Amanda. I think that's also something that a lot of people are not really aware of in terms of that aspect of the suing part that you just mentioned as well.

Amanda Farmer: Yes, so your point there about charging for payment plans, that's really interesting to me. It never occurred to me when, but I completely understand where you're coming from. Never occurred to me that owners corporations were charging or strata managers were charging for that service. But what I've heard now from a couple of managers is that, "Yes, there's a bit of work in this, Amanda, and this is an additional service that we provide the owners corporation. So we then charge them a fee."

I think that's fine, and I understand why that's happening. You're right, however, that there is a new regulation that makes very clear that the owners corporation cannot charge the lot owner who is the party to the payment plan. You can't charge those fees to the lot owner. So I think the strata manager can charge the owners corporation for the service, but the owners corporation can't charge in turn the lot owner. And that kind of makes sense. You know, these are people who are supposedly in financial hardship. We don't want to be adding barriers in their way and extra fees.

Reena Van Aalst: Well, actually, I disagree with that because if I don't pay my home loan on time or if I go into is on my home loan, any punitive charges are borne by me. The other people that are customers of the bank aren't paying for my lack of ability to comply.

Now, maybe they should set a statutory fee rather than saying, because I mean I've seen charges as low. I mean, our charging is quite reasonable. We charge \$35 to check a payment plan.

Amanda Farmer: Right.

Reena Van Aalst: But some people are charging \$80 to \$100 to do this. So maybe another way around, which is more equitable, which doesn't punish the owners corporation for those people that aren't paying their levies, which is even though again is the interest charge.

But that's another area we can probably talk about to Amanda. So, sometimes when people think, "Oh for some buildings it doesn't matter because they got enough cash," and they're saying, "Oh, we're getting 10%." So while that person's suffering hardship and they can't pay, doesn't matter because we're getting 10% on outstanding levies. So it's no big deal for some of the buildings. I've got one now that someone owes a lot of money, and we can't pay a person that's owed a hundred thousand dollars, a consultant, because someone had.

So few people haven't paid their levies, and it's really affecting the cash flow of the building because we've got. We're trying to sort of rob Peter to pay Paul. And this is where I think, like, I feel like as a strata manager, I'm becoming like a finance person. I'm trying to like, don't pay this, don't incur that. Don't do this. You know what I mean?

So I can pay this one. And so that's, again, something that is stressful for the manager because we're the ones that are dealing with all the payments and everything. So I think maybe a statutory fee might be a better way to do this.

Amanda Farmer: Yes, it's a good idea. Bear in mind that you can reasonably refuse a request for a payment plan, and that part of the new regulation has started that sets out what reasonable refusal looks like, and it includes - if your funds would end up in deficit or if there would be insufficient funds to. To pay expenses. So that is a new Regulation 17J that has started. Not all of the new regulation has started, but that has. And that sounds like your situation there. I don't know if those owners are requesting payment plans, but if they were, and you were to say, "Well, no, sorry, because if you don't pay, we can't pay this bill." That's a reasonable basis on which to refuse a request for a payment plan.

Reena Van Aalst: Yes, and I think the thing to point out, and I think it's based on demographics and based on various factors, but sometimes people - they'd rather pay their mortgage first and pay other things before they pay their strata levies. So, people put like maybe third or fourth in the chain of payments. So I think that sometimes there are people that suffer financial hardship, they might lose their job, they might have illnesses and all that.

But then there are other people. I remember someone years ago, and I'll never forget this because it was based on that person having to pay his kids' private school fees. And I'm thinking, like I said, Tim, well, at the time, you know, well, this is maybe eight years ago, I said, "Well, give us your assets and liabilities." Well, I'm thinking, well, how else is someone going to assess this type of thing, really? We had a court assess it.

Amanda Farmer: Well, you just have to Google. And this is what I've done in the past when I've been asked this question, and before the legislation started. The ATO. The ATO has financial hardship provisions, and it requires all those kinds of details from taxpayers to assess from there and financial hardship. That's not the requirement for strata. That hasn't been incorporated into the legislation.

The idea is, you know, that's private information. Owners corporation doesn't need to know it, but it does leave you in that position where people who may not be suffering financial hardship and just want to prioritise other expenses are able to enter into payment plans.

Reena Van Aalst: Or people. I think the thing with the interest provisions where now the strata committee can approve a request to remove interest. I mean - I saw one of our colleagues ask that question this morning - where people now are looking at this saying, "I can't pay, but I want interest forgiven."

It's like, well, I don't think if you have a mortgage, your interest is forgiven. You get time to pay it off. Or a credit card. I mean..

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Amanda Farmer: Yes.

Reena Van Aalst: The thing is, I mean, just because you live in strata, it's a form of property ownership. It's really.. I know it's people's homes, but it's also an investment. So it's an asset that has value, which is 90% of Sydney is rising. It's not going down. House prices, apartment prices are rising. So.

Amanda Farmer: Reena, I think you're in the loop on this. We both have a colleague who let us know very recently that almost overnight, she received 31 requests for payment plans. And she just said, "Yes, well, good news travels fast, doesn't it?" So she's working through those now. Something else I'll quickly point out that has come to the attention of others is that the prescribed form for the payment plan request is deficient in that it does not have a space for the lot owner to put the starter plan number or the address of the building.

So, for example, this manager who just received 31 requests for payment plans. She's only got the lot owner's name and lot number because that's all the form requires. So she is having to draw through her records and match, as best she can those names to buildings. I, along with a number of others, have certainly brought that deficiency to the attention of Fair Trading, and I understand that is on the list. I'm going to say I don't know exactly what's going to be done or when, but on the list to be attended to. So hopefully that's fixed up quickly.

All right. Lots more that we could talk about - about payment plans and unpaid contributions. I learned so much from you, strata managers, listeners - what I read on LinkedIn. Please do post your comments and questions under this podcast episode or reach out to me on any of those social platforms. Let us know if you disagree. If there's something we've missed. This is complicated stuff, and it's not always clear what legislation has started, when other parts are starting, what it means, what we should all be doing? So let's keep talking about it.

Reena Van Aalst: Thank you, Amanda.

Amanda Farmer: Have you got a win to share with us this week, Reena?

Reena Van Aalst: Yes. So on Tuesday, I was invited to be on a panel for the Strata Agent Business Leaders Forum for Class One Managers that applies to - for our listeners who aren't strata managers - to licensees in charge. And my panel involvement was related to the subject of navigating complex schemes and mixed-use developments.

Amanda Farmer: Nice.

Reena Van Aalst: So the questions revolved around BMCs and all the challenges and issues relating to the management of those and the conflict that arises between the various entities. Also, the lack of understanding of strata managing agents and building managers of how BMCs actually work. I think that's an area that really needs a lot of attention. And Fair Trading does recognise that there are also provisions in schemes that had SMS registered before 2015, because the current one requires a five-year review.

The ones that registered since that date require a five-year review in the Development Act. Those ones prior don't. And some of the voting rights where they're unanimous to change any percentages, that's also being looked into in terms of being able to change that voting mechanism or going and getting an order for them to be changed where it's deemed to be reasonable, whether use has changed over time or there were deficiencies in the first place because those things normally would go through dispute resolution mechanisms and not really get anywhere.

So yes, so there's a whole lot of stuff happening. It was just good to see a lot of my colleagues that I hadn't seen for a long time. And it was nice. I've never actually been to the Fair Trading, the one at Parramatta, the new building. It's just lovely. Right?

Amanda Farmer: Yes. Nice.

Reena Van Aalst: Really. I was really impressed.

Amanda Farmer: Excellent. Well, it's great that Fair Trading's putting that on. I attended the one that was hosted in July as a speaker, and as you hinted at there Reena, this is a mandatory requirement for Class 1 agents in New South Wales to attend one of these Fair Trading forums. It's about.. Well, I think it's across the day once you have lunch. I think it's supposed to be five hours of attendance at a Fair Trading accredited event, which these forums are. And, I think it's fantastic that they're having industry leaders like you present on these topics.

And I do know, yes, I haven't had a look closely at the reform that's recommended in this area, but I think this is another big area that we're going to see change a lot in the Development Act for these complex teams. Strata management statements BMCs hasn't been touched for a little while. No, I think it needs to be. It was an online event.

Reena Van Aalst: This was actually only an online event, but we had to go in there as panel people.

Amanda Farmer: Oh, yes.

Reena Van Aalst: This one, yes. The previous one that you went to was in person, but this one was online, which is how everyone had to do the five polls. Where to do polls.

Amanda Farmer: Oh, yes. Fill in those questionnaires as you go, so they make sure that you're still there.

Reena Van Aalst: Yes. And also what was good about the forum too, there was actually opportunity for managers to ask questions. And so the strata commissioner, Angus Abadee, would just select a few questions and then put that to the panel, which is really good too.

Amanda Farmer: Great. Excellent. Well, thank you for sharing that, Reena. As we wrap up I will share a quick win from my side. This one, from one of the clients in my legal practice, also a member inside our online community. She has like a number of other members, very recently. I don't know if it's the time of year and lawyers wanting to wrap things up, but she has successfully settled her NCAT application with her owners corporation. So congrats.

This was a claim relating to a leaky bathroom and also concrete cancer in a slab. And the interesting thing about this case and why I wanted to mention it, because this happens all the time. The owners corporation had obtained a report from their own engineer that said floor needs to come up, Magnesite flooring needs to come up, slab needs to be inspected. If there's concrete cancer, concrete needs to be remediated.

Also, the bathroom needs to be dealt with, and the way that should be dealt with is, all tiles need to come out, re-waterproof, a new tiles laid. So the report was there very standard in our experience - old building, this was not the only unit where this had happened. But the owners corporation, well, let me say, maybe the strata committee had refused to take the advice of their own engineer, refused to do the work.

So when this owner came to me and said, "Amanda, can you help?" I think she'd already started her Tribunal proceedings when she came to me, she said, "Do I need to go and get an expert? And they cost thousands of dollars. And I said, "No, you don't, because the owners corporation's already got the expert."

Reena Van Aalst: They've done the work for you.

Amanda Farmer: Just tell the Tribunal I want the owners corporation to do that. I want them to implement the recommendations of their expert. Very clearly set out qualified engineer. She amended her application to make that very clear to the Tribunal and to the owners corporation. And, probably took a little longer than it should have. But after a bit of back and forth, and after first an offer to megaseal the bargain floor rather than do the full strip out, she finally got an offer from the owners corporation.

“Yes, we will do the work, we will pay for it in accordance with what our engineer has recommended. Please withdraw your Tribunal proceedings and save everyone some costs.” She was happy to do that. Great result. But just remember that owners go and have a look. Make sure you have a look in your owners corporation's records and see if perhaps the committee has already got the advice from its own experts that aligns with what you want.

Because you can, to an extent, if you're going to a defendant hearing, you do need to be careful about relying on the other party's expert. But it might be enough to achieve a settlement - to make very clear to the owners corporation, I'm only asking you to do what your own expert has told you to do. Sometimes, even when we turn up to the first directions hearing and the Tribunal is told that by an owner, the Tribunal member, it's not uncommon in my experience for the Tribunal member to say to the owners corporation, “Guys, you've got this report. Unless, for some reason, you're telling me the report is wrong, you don't agree with your own expert. I think you need to do the work.”

And that can be important for an owners corporation to hear. It's not necessarily the strata manager who's standing in the way. It may be a strata committee who doesn't get it.

Reena Van Aalst: Yes, I think that's a problem, man. I think people perceive that you are the person saying no, but you're just the messenger. Cause the end of the day, why would a strata manager not want to help an owner who needs help. And part of the problem, I think, too, is that it's a lack of understanding in relation to the law of agency by people in general.

Amanda Farmer: Yes. I mean, to take it further, why would a strata manager want to get involved in that anyway? Full stop. I mean, if your client, the owners corporation, has got a report from an engineer that says, “This is the problem and this is the fix,” as the strata manager, you'd simply be saying, “To meet your legal duty to properly repair and maintain, I recommend that you implement the recommendations of your engineer.”

I think you should say that. I think you can say that, and that's it. It's not a case of I'm siding with the lot owner or the owners corporation. Or, I'm not supporting you, owners corporation. And when the owners corporation, as I still hear so often, when the owners corporation or the committee comes back and says, “Oh, but it's really expensive and we can't afford it,” then I think the role of the strata manager is to say, “That is not a good enough excuse. I hear you. I understand there are owners in financial hardship. I understand we've got to replace the lift or we've got this other work on, but in the eyes of the law, that is going to be enough.”

If this lot owner gets impatient, goes and sees the lawyer, decides to file in the Tribunal, you're not going to have a leg to stand on. The Tribunal will laugh at you when you say, “But we don't want to pay, it's too expensive.”

Reena Van Aalst: Yes.

Amanda Farmer: Our strata managers can and should be telling their clients that.

Reena Van Aalst: Yes, well, I mean, that's a really good point that you raised, Amanda, because I've just got this NCAT application for one of our schemes that we've managed. It was a building that was also managed where I previously worked. And what's happened is that the lot owner actually is a lawyer, but she's asserted in her NCAT application that basically we haven't given the strata committee direction in relation to the matter, but the issue is that we have, but we're not going to do it in front of her.

Amanda Farmer: Yes, I love it.

Reena Van Aalst: And the other thing that's also occurred in this particular building, which I can talk about another episode, is that committee member is also the person who has quotes there that relate to her apartment, which we've had to ask her to leave, and she refuses to acknowledge that that section relates to that part of the legislation where a committee member who has an interest in a matter cannot be present during the deliberation.

They must leave the meeting, or if they're in Zoom, they have to put on the meeting room. So it's been really challenging that aspect because trying to get people to understand that. And so we have tried as managers to say, "Listen, it's not worth it. And sometimes it's not about the money. In some cases it is about the money, sometimes it's not about that." So. And so it's like, well, this, that, or whatever.

Amanda Farmer: And, we don't want someone to have a new bathroom.

Reena Van Aalst: Yes, it's like, why are we paying for their renovation? Basically, yes. Or in this case, it's water ingress-centered deck. But it's far more complicated because the deck actually is owned by another lot owner, not the owners corporation. So the deck is owned by the owners and the membrane by the owners corporation. So we had to get the consent of the deck owner, who's not the actual owner.

Like this particular apartment is below the deck. And we had to get an order to allow access to be able to do the work previously. But it's non-invasive, which is. It's very complicated. But another episode, that one.

Amanda Farmer: Yes. But, I'm sure so many listening can relate. I mean, whether you're a committee member saying, "But we can't afford it," or a strata manager is trying to send this message. And you know, I do when I meet with owners for the first time who are saying, "They're just not doing anything. And this strata manager, I don't know what they're good for. Surely they should be." And I say, "Well, hang on, hold up. Are you on the committee?" Often, "No." The answer is. And I said, "Well, if you're not on the committee, you don't know what the strata manager may or may not be advising the committee."

There are motions on the agenda, but they may not be wanting to waive their legal privilege if they've got advice on this, for example. So the agenda might not necessarily reflect what's going on behind the scenes. You don't know. It could be that the strata manager is giving that good advice and it's just not being followed. Which also is not good enough.

Reena Van Aalst: No.

Amanda Farmer: So, lots covered today. New legislation, building managers, NCAT proceedings. This has been a juicy one. Thank you for being here to share your knowledge and experience with me and our listeners. Reena Van Aalst. I look forward to our next catch-up.

Reena Van Aalst: See you next time, Amanda.

Amanda Farmer: Bye for now.

Reena Van Aalst: Bye.

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