

Publication Date: June 19, 2017
YSP Podcast Transcript: Episode 066.

Listen to this podcast episode here:

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. To access previous episodes and useful strata tips, go to www.yourstrataproperty.com.au.

Amanda Farmer: Hello and welcome. I'm Amanda Farmer and I have with me today Reena Van Aalst. Hi, Reena.

Reena Van Aalst: Hi. Amanda. How are you?

Amanda Farmer: I'm doing very well. How are you?

Reena Van Aalst: Good, yes. Very busy but, I'm looking forward to the weekend away and the national conference next week, so yes, it's all good!

Amanda Farmer: Yes, we're heading off to the SCA national conference in the Hunter Valley. I think by the time this episode goes live we will have probably already been there. So, wasn't it fun?

Reena Van Aalst: Yes!

Amanda Farmer: I really liked that question that you asked.

Reena Van Aalst: Yes, exactly.

Amanda Farmer: Before we get stuck into our challenges and our wins for this week, I want to let our listeners know how they can get a copy of the transcript for this episode. Now, we have been producing transcripts for a while now on the Your Strata Property website and they have been really popular. They're a really good way to review the key topics that we're talking about in the episodes, particularly these episodes with me and Reena. If you're driving and you're listening to this if you're at the gym listening to this if something really important came up and you didn't quite catch it ... A great way to review that information and to share it with your strata manager, with your fellow committee members, your fellow owners, is to grab a copy of the transcript. So, you can now have the transcript delivered straight to your inbox and there will be a unique URL web page for each transcript for each episode so if you want the transcript for this episode, you go to www.yourstrataproperty.com.au/066, that's the number 066 and that's because this is Episode 66 ... I can't believe it.

Reena Van Aalst: Wow.

Amanda Farmer: It still feels like episode 6!

Reena Van Aalst: Yes, it's a great accomplishment, Amanda. You don't realise how time flies and how much of it goes into producing these podcasts, so ...

Amanda Farmer: I know ...

Reena Van Aalst: Congratulations ...

Amanda Farmer: I know, but it's a whole lot of fun too. I wouldn't be able to do it if it wasn't fun. And we get such great feedback from our listeners and from members inside the YSP online community that it is something that I'm passionate about and more than happy to keep doing. And now I have you by my side, Reena, it's all the more fun.

Reena Van Aalst: Thank you. Definitely lots of fun.



Publication Date: June 19, 2017
YSP Podcast Transcript: Episode 066.

Amanda Farmer: So, head over to yourstrataproperty.com.au/066 if you want to have a copy of the transcript for this episode delivered straight to your inbox. If you are a member of the YSP online community, then that transcript is absolutely coming straight to your inbox without you having to ask for it. That's just one of the benefits that I like to offer to our members. So, that is a bit of housekeeping done there, Reena. Let's jump on into our challenges for the week. What's been your challenge?

Reena Van Aalst: Yes, well, one of the main challenges that I've had has been with a new scheme I've just taken carriage of recently and, basically it's a very small scheme, with one majority owner and a number of other owners. And what's transpired ... Amongst many things, which I won't go into today, but ... The fact that the strata manager, who was previously managing this scheme seems to have taken sides with particular owners. And the way it was described to me by one particular owner, it's like someone who is putting petrol on fire.

So I'm managing agents that are trying to take an objective view and it's hard sometimes. I mean, we all know when one side's perhaps breaching the act or one side's being unreasonable ... But when you're in that position as a strata manager, you need to be as objective as possible because the owners look to you for advice and guidance. And when one party feels a bit aggrieved or feels that you're taking one person's side over another person's side ... Regardless of whether you may feel that way yourself, in terms of how you project yourself to the owners and, obviously to the clients in general ... You've really got to make sure that you remain impartial and provide professional advice to your scheme and maintaining that impartiality. You just be impartial. It's really important. And I think it's been quite sad that many owners have said this, not just the one owner, but other owners have also confirmed the same even though she may have been on their side. So, yes, it's unfortunate.

Amanda Farmer: It's a tough gig, this strata management and when you're dealing with people and their homes and their everyday personal lives, personal finances, everything that is on your plate is close to the heart of somebody ...

Reena Van Aalst: Yes, exactly right.

Amanda Farmer: And I think that makes for a difficult job for you as a strata manager but, as you say Reena, all the more important, I think, that you act with the utmost professionalism. And perhaps be aware of that maybe unconscious bias that you might have towards one lot owner or another. Yes, you might think that someone is being sensible, while the other might be being irrational, but consider whether you might be adding fuel to the fire by expressing those views instead of remaining as objective as possible.

Reena Van Aalst: And I think another aspect of how one is perceived, externally by others, is our body language, and I think they say that so much of your communication percentage is basically based on your body language, rather than what you're saying. So I think, in this instance as well ... When you do have that unconscious bias, and it then comes through your persona and your body language, then that's another aspect one should consider. Whether you're a strata manager or not, I think in life generally, sometimes, we let our emotions and our biases dictate our feelings and then this obviously comes across. And when you're acting in a professional manner, you've got to be far more attuned to that side of your personality, if that's something that you need to work on.

Amanda Farmer: Yes, really good point. The other thing that I regularly remind strata managers is to understand who you're acting for, who you're engaged by. You're engaged by the owners' corporation and you're taking instructions from the strata committee, you're not taking instructions from one particular lot owner. And I've seen on numerous occasions, strata managers get themselves into trouble by following instructions of one lot owner and not stopping to ask, "Hang on a second. Does this person have the authority of the committee to ask me to do these things, to ask me to spend this money, to ask me to engage this particular contractor?" And I think you can lighten your burden, let's say, considerably, if you take a step back and say, "Okay, do I have to do this?"

Reena Van Aalst: Well, it's a really good point that you're raising, Amanda, because a lot of the times a manager does things because of the power they might perceive that person has, in terms of the scheme in general or relating to their appointment. In one particular building that I'm aware of, there's four owners, four committee members, and one particular owner has quite a strong personality and he asked the strata manager to arrange for the building to be painted.

Publication Date: June 19, 2017
YSP Podcast Transcript: Episode 066.

So there was a little meeting about colours but no one had actually approved the contractor, they hadn't approved anything. The next minute, two owners find out, of the four, that the painter's there to start work in three weeks after their initial conversation. And the manager didn't even hold a meeting to approve the contract and so there are many instances where I think there is a power issue where people think, well that person is the person that's going to keep me engaged or appointed. And unfortunately, this is where the political power-faction part of strata management renders its ugly head.

Amanda Farmer: Yes. But just a word of caution there for strata managers and for committee members and lot owners who are instructing their strata managers, always come back to the source of the authority. Do I, as a strata manager, have proper instructions from the owners' corporation or the strata committee and do I, as a lot owner, have the authority to ask my strata manager to be doing these things on behalf of the building?

Reena Van Aalst: That's definitely correct.

Amanda Farmer: All right. Well, I want to revisit a topic that we spoke about, Reena, back in Episode 062, and this was about proxy forms.

Now, I've been contacted within the last couple of weeks by a few listeners who were very interested in that discussion and, first of all, said, "Thank you, Amanda and Reena, for addressing the issue." The issue being, are proxy forms, completed under the old New South Wales law, valid under the new New South Wales law? And you and I, Reena, discussed our views on this and we came to the conclusion that if you have a proxy form that's been completed under the old law and it's appointing a proxy holder for a period ... For example of two consecutive annual general meetings ... That that proxy form should still be accepted as valid now that we have the new law in place because we do have savings and transitional provisions in the new law and that says something along the lines of anything done under the old is considered valid under the new. And the conservative approach is not to disenfranchise our owners and ensure that everybody has their right to vote. And accepting those kinds of proxy forms, we thought, would be valid.

Now, I have had more than one listener contact me and use the example of a form that has been filled out just for one meeting, just a single appointment for one meeting, and it's a form that complies with the old law but not the new and ...

Reena Van Aalst: When was the meeting held?

Amanda Farmer: The meeting was held after the 30th November 2016 ...

Reena Van Aalst: Oh, okay.

Amanda Farmer: So, under the new law.

Reena Van Aalst: Okay, so it was basically before the new law but applies to a meeting after the new law.

Amanda Farmer: Yes.

Reena Van Aalst: Okay.

Amanda Farmer: Or someone, somewhere along the line has got their hands on the wrong version of the proxy form. So they've turned up to a meeting, it's being held at a time when the new law is in place and they've produced an old proxy form, just for the purposes of the one meeting. And the question that I was asked is, "Amanda, is that valid?" And I said, "No. That's not valid because that's a form for a one-off appointment, the new law is in place. There are new requirements for proxy forms and the new requirements should have been followed." And, I wanted to make that clarification that, what we were talking about ... Or at least what I thought we were talking about Reena back in episode 62 ... was a different situation where you have an on-going appointment and that appointment started under the old law, and it was an appointment for two consecutive annual general meetings or 12 months.

Publication Date: June 19, 2017
YSP Podcast Transcript: Episode 066.

Amanda Farmer: I suppose what is important to say in this situation is that best practice, in my view, would be to complete a new form if you can. If you are someone who is appointing a proxy because you live overseas or interstate or you just can't be there for these meetings, the if you can, get your hands on an up to date copy of the statutory form, which is set out in the strata scheme mismanagement regulation. Your strata manager and also Fair Trading can also give you copies of these forms ... And fill out, rather than take the risk and rely on an old form. This really seems to be an unsettled issue at this point in time and best to act conservatively and fill out a form in accordance with the new law if you can.

Reena Van Aalst: Yes, definitely. I agree with that, definitely. Whatever you can do to make sure that there can be no problems in the future in terms of any proxy appointment that's given. Yes, I'm interested to find out more, Amanda, about that case that you're referring to ...

Amanda Farmer: Me too.

Reena Van Aalst: And hopefully it will be a reported one.

Amanda Farmer: Yes. Keep you posted.

Okay, so what's exciting this week, Reena? Any wins? What are you looking forward to?

Reena Van Aalst: I'm just looking forward to the weekend and going away to the conference next week. So pretty much, I'm just quite busy at the moment with new schemes and doing all the take-on work for that. But I'm definitely looking forward to the national conference, which starts next Wednesday.

Amanda Farmer: Yes. So, that is the Strata Community Australia National Conference, which is being held in the Hunter Valley. Always a good turnout. I'm zipping up there myself, but only for a very short period, because I've got to head off to Melbourne on the Thursday night, but I'm looking forward to catching up with you and others. But, as I said, by the time goes to air, we will have been there and enjoyed that. And didn't we have a great time?

Reena Van Aalst: Exactly.

Amanda Farmer: Well, something that I want to share this week, Reena, that has been really positive: I had one of my members inside the YSP online community ask a really important question and that was, "How do I get my hand on cases about strata issues?" And this was a member who is involved in some litigation or about to be, and they wanted to do a bit of research themselves about how others, appearing before the tribunal in a similar situation, may have dealt with their issue.

And they asked me, "Amanda, how do you, as a lawyer, find cases on strata issues including decisions made under the old law? Because, as we know, the Strata Schemes Management Act 1996 is now repealed. Does that mean all of the decisions made under that Act have now disappeared into the ether, and we can't get our hand on them anymore?" And I said, "Fabulous question," and what I did is directed this member of my community to the website AustLII and I'll spell that its austlii.edu.au, AustLII. And that's a website that lawyers use to look up legislation and there's a really clever feature on the website where you can find all of the cases that are associated with a particular section of legislation.

So, for example, if you were wanting to find cases on the repair and maintenance of common property, which used to be Section 62 in the old law, you can look up a copy of the old law ... It's called a Repealed Act ... You can then go to Section 62 in the Repealed Act and then you can click a button, which then highlights for you, all of the decisions made, whether by the tribunal or by courts, which reference Section 62 of the old Act. And what I was able to do was actually record a video of me doing exactly that exercise, and I popped that into our members' forum and our members were able to watch that video and then find out how to be a bit lawyerly and look up strata cases. And I know that particular member, who was after that information found it really useful, so I was a bit chuffed that I was able to do that ... Something really simple for lawyers, but the layperson doesn't necessarily know how to do that kind of thing and it takes me five minutes to record a video and share that.



Publication Date: June 19, 2017
YSP Podcast Transcript: Episode 066.

Reena Van Aalst: That's a great idea, Amanda, I think watching people find information, and seeing it in a visual way really helps, because sometimes when you're following instructions one little thing doesn't work, but at least when you're seeing someone actually doing it, it does help.

Yes, I've always used AustLII in terms of bookmarking all the legislation on my Chrome browser and it helps for not just strata legislation but any other legislation that you want to look up as well. But I think, in terms of cases, some of the cases are quite long and I think, for a layperson, they would probably still need some legal assistance in deciphering some of the reasons.

Amanda Farmer: Yes, definitely.

Reena Van Aalst: I would just caution any manager out there even though you may read a case, it doesn't mean that we don't need assistance in some respect to pursue, that there's complexities and it's not just a black and white sort of case.

Amanda Farmer: Absolutely. But I have been assisted, definitely, by clients in the past, who have been a bit proactive with this kind of thing and have said to me, "Amanda, I was having a glass of wine on a Friday night, I jumped on AustLII and started to look up some keywords that might be similar to mine and I found these few interesting cases. What do you think of these?" And there have been, I have to say, a couple of occasions where I've been pointed to some helpful case law by very intelligent and engaged clients. So, even if you do have legal representation, don't hesitate to jump in and do some of the legwork. We, as lawyers, appreciate that.

Reena Van Aalst: Yes. Not all lawyers would, but anyway.

Amanda Farmer: Well, enjoy your time away, Reena. It's going to be a well-deserved break, even though you are definitely still in the strata zone, let's say that ...

Reena Van Aalst: Yes.

Amanda Farmer: At the SCA conference. But have a glass of wine, have a nice dinner ...

Reena Van Aalst: Definitely will.

Amanda Farmer: And we'll catch up with you next time.

Reena Van Aalst: Okay, Amanda. Take care. Bye.

Amanda Farmer: Thanks, bye.

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 via the show notes at www.yourstrataproperty.com.au. You can also ask questions in the comments section, which Amanda will answer in her upcoming episodes. How can Amanda help you today?

