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YSP Podcast Transcript: Episode 052. In Conversation with Reena Van Aalst – Why Are Strata Managers Charging ‘Compliance’ Fees?

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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. 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 this week Reena Van Alst. Hi Reena, how are you?

Reena Van Aalst: Hi Amanda. How are you?

Amanda Farmer: I am not too bad. We are recording this kind of lateish on a Friday afternoon. And I haven't got my glass of wine out yet, but I'm very close to it. I usually do these in the morning. But I'm looking forward to that Friday afternoon relaxation. Let's say that.

Reena Van Aalst: Me too. I've just got a bit of work to catch up on. But yeah, definitely going to have a glass of wine at my desk with me.

Amanda Farmer: I've just moved house as well, so I'm sort of in that stage where everything is upside down and inside out. And I can't find my keys or my shoes, or all that normal stuff takes a while to settle into. But that's okay. We're getting there.

Reena Van Aalst: That's good.

Amanda Farmer: So we're here today to talk about our wins and frustrations for the week. Do you want to kick off, Reena? What's been frustrating you this week?

Reena Van Aalst: Yeah, well last week I had a strata committee meeting with one of my new schemes. We were going through the financials and the committee advised me that their agent had charged them beyond the term of the termination. So the contract had expired. The agent had actually resigned back in late October last year. And therefore when I was appointed, that was way past the three month period. Yet when we actually got the financials, we noted that he had charged three months from the date of the EGM where I was appointed, which meant that they were paying for two months of his agency fees as well as me starting.

So I emailed him as they've asked. He just basically said, "Well the first that I'd heard of a new agent being appointed was when the EGM had occurred. And he really hadn't resigned." Even thought that was minuted. So there were also other charges to do with Schedule B, charges for work that the particulars hadn't been provided. That's one thing I think is really important for Strata managing agents. When you do charge additional fees, you really need to itemise what the fees are.

The other thing also is that there were other functions that were undertaken, which had been charged for before I looked at the books.

The other thing also is that there were other functions that were undertaken, which had been charged for before I looked at the books and records. And before my appointment had commenced. And then when we asked for a refund of those fees, they were also not forthcoming. So it's just been a bit of a strange issue for agents in particular where sometimes, clients don't understand that you must give three months notice even though a contract has expired. That's been one of the very common questions that I've had where people have asked me, "Our contract expired." I said, "Yeah, but it normally a standard agency agreement, which is put out by previously OCN and now SCA do normally have a three-month provision."

So sometimes if the relationship has soured, we would suggest a payout. So sometimes it's actually worth paying out the previous agent if you feel that you're not getting the service.

Amanda Farmer: Yeah it's interesting that you say that, because I was just about to jump in and say I was involved in a similar circumstance last year for a building where they thought that their agent had charged them for things that they shouldn't have



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been charged for in exactly the same situation as you've just outlined there, Reena.

Where the building said that the agreement had been terminated. The agent said, "No, it hadn't." Or, "I was still authorised to carry out these additional duties." And we ended up settling it because it was something like \$15,000. It was commercially reasonable for my client to put an offer on the table. It was reasonable for the agent to accept it. Nobody wanted to litigate about it, and it settled. And everybody moved on. How much are you talking about in your situation?

Reena Van Aalst: It's not a lot of money, but I suppose it's more about whether the committee at the moment think that this happened so long ago the resignation. That they weren't even given an opportunity at the time to say, "Okay, well I've now got this notice of a new agent. I'm going to charge you the three months." So they didn't have the opportunity to even say, "Okay, in that case, let's negotiate when my company would take over." It's a few thousand dollars, but I think it's just more the principle. In a sense also when the relationship has soured because of lack of work being undertaken in the committee's eyes anyway it's important that we might just send a letter to him, like a formal letter and just see how it goes. It's not really worth probably spending too much time and money on it.

Strata managing agents should really be careful. To me, your reputation's really important and it's not really worth, for anyone, to have it soured over such a small amount of money in comparative terms. It's a small industry. People know people. Now as we know people going out to get quotes before the 13 May deadline where prior to an extension happening is that does happen by the strata committee.

I just think it's important that even though you may have ended your relationship, it's always good to leave on a good note, because your reputation out there in the marketplace is really what holds us, as agents in good stead. And at the moment, when that happens, it doesn't really help anybody.

Amanda Farmer: Yeah. Absolutely. Good advice for not just strata managers, but anybody in business. Let's not be penny-wise, pound foolish.

Reena Van Aalst: Yeah.

Amanda Farmer: That's actually very similar to my frustration this week, Reena. I have been contacted by a committee member and she is a member of two committees, two different buildings that she has investment properties in. She's received the same notice from each of her different strata managers. That notice says that our company is going to charge you a lump sum. It's anywhere between about \$500 for one building and \$700 for another building, a lump sum that we're adding to your next account to cover our costs of having to bring ourselves, our staff members, our policies and procedures up to date now that the new law has taken effect in New South Wales.

We are charging all of our schemes this lump sum. It varies depending on how big the scheme is. The note says that they are entitled to charge that fee under their agency agreement. They're just letting the committee members know that it's going to happen. Now, this committee member has come to me with a concern, the concern is, of course, are they allowed to charge us this? And it looks like they have sent this note to every building that they manage. They are a very large strata management company that has quite a lot of schemes in New South Wales under management. So I can only imagine that probably thousands of buildings have received this note. There's a real question, I think, having now had some time to look at the agency agreements that this particular building has, these particular two buildings have. Our real question is to whether these Strata managers can charge this fee. Have you heard about this happening, Reena?

Reena Van Aalst: Actually this is news to me. No. I haven't actually heard of that. Obviously, this is probably the first time I've had a huge change in the act, but I haven't heard of anyone charging for actually getting ready to be compliant with the act.

Amanda Farmer: And there seems to be, as I said, an assumption there on the part of the managers that they're entitled to charge this fee. And I suppose some buildings just accept that. The \$500 or \$700 just comes out in the wash.



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Other buildings like where this particular lady is on the committee are questioning and saying, "Is this legal?" It's something that I'm still looking at and still taking instructions on.

I haven't formed a fixed view, but I am interested to know if there are other committee members, other lot owners, even Strata managers out there who are aware of this happening, have had similar concerns, even lawyers who might have given some advice on this. It's something that I think is important for committee members and lot owners to be across. And to make sure that if you are being charged this fee, then the strata manager or the company that the strata manager works for has been able to point to the clause in the agency agreement that gives them the authority to charge that fee.

That's the key there. Do they have authority under the agency agreement? And can they point to the clause that gives them that authority? If they can't point to their authority, then query whether they are legal able to recover that fee from you.

Reena Van Aalst: Very interesting, actually. I assume that the letter referenced a section?

Amanda Farmer: It didn't, no. The one that this particular committee member received and sent on to me. It didn't reference the section of the agency agreement they were relying on. I think it might have made a general reference to the fact that they're authorised to do it and so they're doing it. But certainly came as a bit of a shock to this committee member understandably so, that the first she heard of it was in this email letter.

So perhaps again, another lesson for agents. Maybe pick up the phone to your chair people and committee members to talk about something like that, because it certainly hasn't gone down well with this particular committee member. She's an owner in two different buildings. I imagine that's indicative of a larger proportion there. Managers are probably fielding calls about this. Maybe it could have been dealt with in a different way.

Reena Van Aalst: Yeah, I mean, you're right about it. Sometimes it's not what you do, it's how you do it.

Amanda Farmer: Absolutely.

Reena Van Aalst: Yeah. Maybe it would have been good, perhaps the Strata manager might have telephoned the chairperson or the person who is the main contact and perhaps spoken about it. Then again if it's a large company they would have a lot of schemes under management that may have been a difficult thing to try and ring everybody and tell them. Yeah. It's a tricky one. Amanda Farmer: Yeah. So we'll see how that one plays out, but definitely, if you've received this kind of a note and you've got a concern about it, don't hesitate to get in touch with me. Amanda@yourstrataproperty.com.au is my email. I'd be happy to just have a preliminary chat with you about how that fee might have come about and whether or not I think it's legal.

Let's move on to our wins for the week. Reena, what has gone well for you this week?

Reena Van Aalst: Well this week I had some committee members of a strata scheme contact me about having an EGM convened on their behalf to pass some, what they call now, common property rights by law, which is previously the special privilege bylaws. There was a subdivision that had already occurred and this was omitted from those motions at the time. Now the lawyer acting for those particular lots had emailed them and said we need to obviously pass this as well now.

Unfortunately, the managing agent had already issued an agenda and refused to add those motions or reissue the agenda even though there was still time to reissue the agenda. Anyway, so I ended up just telling them that it was just best to convene another general meeting, just straight after the other one even though, the day after, even though they already had one the day before. There's a bit of a split committee in this particular case. Some people don't want to support these bylaws. So, therefore, they were trying to stifle the agenda being issued.

I think it's important for managing agents to understand in a sense, who has authority to ask to convene a general meeting. It's usually the secretary, I think it's one-third of owners requisitioning a general meeting or the secretary.



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So these two people are on the committee and they had asked the committee on their behalf.

There's obviously issues to do with who is going to pay for the general meeting. I think it's important for managing agents to write to those owners and say, "Well this is the cost of dropping the agenda, of holding the meeting, and then issuing the minutes as well as any disbursements associated with getting that agenda out and minutes as well."

I think that they were quite happy that I said, "Well, it doesn't matter. That meeting's been issued. The agent's refused even though it could have been reissued on that same day. Yeah, and so they were quite happy. Now hopefully they'll get their bylaws passed, so that's something I can probably report about if it doesn't happen in a few week's time.

Amanda Farmer: Yeah a very practical solution to a problem that I've seen before, motions not finding their way onto agendas when they should. Good practical advice, I think. Hold another meeting.

Reena Van Aalst: Yeah. It's the only one. Especially you don't want anything to happen where someone's going to try and undo what's been passed if there's been any issues to do with notice periods.

Amanda Farmer: Yeah, that's a very good point. And it's one that we see frequently in the law where these quite technical requirements may not have been met. There were very important motions on the agenda, and we're not sure whether or not they might be successfully challenged because things like notice periods haven't been complied with. Advice we do often give is to say, "Well, hold the meeting again. That will cure any problem with earlier meeting." So good thing for committee members and managers to remember that that's an option.

Reena Van Aalst: Yeah.

Amanda Farmer: Excellent.

Reena Van Aalst: So what about your win, Amanda?

Amanda Farmer: Well I want to talk about something nice. My something nice is that I was recently in Melbourne and I think I let the listeners know about that in an earlier episode, that I was travelling to Melbourne to attend Deacon University's International Forum on Multi-owned Properties. This is a fabulous conference that Nicole Johnston, an academic at Deacon University hosts each year. She invites academics from all over the world who research and study multi-owned properties. That's the general term that we use for strata, strata title, condos, different ways of living in apartments around the world. These academics come from South Africa. They come from New Zealand. They come from China. They let us know what they've been researching, present their papers and it's also an opportunity to set the agenda for future research. For all of these academics to get in the one room and say, "Well what kinds of things should we be looking into over the next year?"

It was absolutely one of the best conferences I've been to. It was less industry focused, if you like, as some other conferences that I go to. It was very much focused on, "What can we be looking at to improve the way that people live in multi-owned properties around the world?" There was a researcher from Tasmania that was looking at ways that people are building collective communities. So they're actually building their own communities from the ground up. Literally bricks and mortar stuff, where they all want to live a certain way together.

It's something that's been quite popular in Berlin where there is former government owned land. They're able to construct communities from scratch there. She's doing a lot of research into that and looking at how that might fight into Australia. And was just a great opportunity to see, not only the different things that happen around the world, but how very similar we are. And we all have problems with pets, parties, and parking.

Reena Van Aalst: And noise.



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Amanda Farmer: Exactly.

Reena Van Aalst: Renovations and Air BnB.

Amanda Farmer: Yes. Definitely. So I thought that was lovely, and I'm looking forward to it again next year. Hat's off to Nicole Johnston who puts that together. I think it's just growing and the reputation is really going strong with that. Encourage anybody who hears about it next year to attend Deacon Uni's conference.

Reena Van Aalst: Yeah that's wonderful. I might get myself down there perhaps as well.

Amanda Farmer: Yeah absolutely. You should. All right, well I think that's it from us this week, Reena. I think it's time for that glass of wine.

Reena Van Aalst: Yeah. I think so too. Have a good weekend, Amanda.

Amanda Farmer: I will, you too.

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