

Publication Date: March 29, 2017
**YSP Podcast Transcript: Episode 054. In Conversation with Reena Van Aalst – Is An
Unsigned Agency Agreement Valid?**

Listen to this podcast episode here: <https://www.yourstrataproperty.com.au/054-conversation-vanaalst/>

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 am very good, thank you. Lovely to have you with me. This is one of our Reena and Amanda in conversation episodes. How's your week been, Reena?

Reena Van Aalst: Yes, it's been pretty busy, which has been good.

Amanda Farmer: Yes.

Reena Van Aalst: Yes, so, quite enjoying the pace now. But, all good.

Amanda Farmer: Excellent. We've been busy too. We've had some litigation on. Certainly, when lawyers are in court and you sort of have anywhere between two-day, five-day, sometimes two-week hearings, you have to be fully focused on that particular case. Unfortunately, it means that some other things start to back up. Now that we're moving into this part of the year, we've had a little bit of that going on, but that's okay, that's what we like, and keep it coming.

Reena Van Aalst: Right.

Amanda Farmer: So, what's been frustrating you this week, Reena?

Reena Van Aalst: This week I actually had a prospective client who asked me what revisions are relating to changing managing agents and I sort of delved into what were the reasons that they were not happy with their current agents. I actually know the firm quite well; they're a good company. But unfortunately, I think they've had just too many people servicing that particular scheme, and obviously, with changing over, there's a loss of sort of knowledge and sometimes there's been advice that hasn't been correct. I think, especially with the new act, I think if people have new stuff and that probably compounds any issues that may be existing already.

I suggested that they actually speak to the licensee in charge and see if they could get another person. Unfortunately, they did speak to the licensee in charge, but they were unable to come to any agreement about a new strata manager. The interesting thing about this is we had an AGM last year in September, and we've already signed a three-year agreement because, basically, last year many agents were trying to put through some of the contracts with their provisions under the new Section 50.

So, I said, "Well, send me the agenda and the minutes, and send me the actual agreement". And they said, 'Well, Reena, but we didn't sign the agreement' I said, "Was there an agreement with the agenda?" and they said, 'No.' So anyway, I looked at the documents they had sent me, and I don't believe they actually did have a valid agency agreement, even though they've passed a resolution, which just basically said that they were reappointed and it didn't really say anything more.

Amanda Farmer: Right.

Reena Van Aalst: And they had prior delegations. So, I was just wondering, Amanda, what your thoughts and views were on that. So, I believe really that they have to rely on the old agreement because this agreement hasn't been executed, and wasn't even issued.



Publication Date: March 29, 2017

YSP Podcast Transcript: Episode 054. In Conversation with Reena Van Aalst – Is An Unsigned Agency Agreement Valid?

Amanda Farmer: Yes, well the interesting thing about strata management agreements is that the legislation is quite strict about how they are entered into; that they need to be agreed in a general meeting, that there needs to be a delegation of the authority that's being granted to strata manager, and that needs to be recorded, that they need to be executed, and that a copy needs to be provided. Now, my view off the bat is if you don't meet those requirements, then you don't have a valid agency agreement.

So, it's a little bit different, too, where you might be talking about contracts generally, where we as lawyers say, 'There's a number of elements to a contract, just because it may not be in writing, or it may not be signed, doesn't necessarily mean a contract is not valid'. I take a different view with Strata Management Agency agreements because the legislation is so prescriptive. It has those conditions; if those conditions are not met, then it's quite likely that agreement's not valid. I'm with you on that one.

Reena Van Aalst: Yes, and I think also, too, there's another provision about sending a copy on owner's Corporation within 48 hours of execution. So, if it wasn't executed, then even that provision hasn't been complied with, so under the Property Stock and Business Agents Act. So I think there's been a twofold issue there.

Amanda Farmer: So, it's certainly something I would recommend though that they do get specific advice on, from a strata lawyer specific to their situation. It's not something that ... There's a lot of money at stake for both sides, and it's not something that you want them to take on in their own hands, make assumptions, and make the wrong calls.

Reena Van Aalst: No. So, I think the first thing that I'm going to advise them to do is just to go back and say, 'Well, we don't believe we have a valid agreement based on these points' and just see how they go. Because obviously, if a relationship has broken down maybe the agent might say, 'Okay, let's just call it a day, three months notice or whatever'. There could be an amicable termination of the agreement. But yes, we'll see. Definitely, I will let them know they should get legal advice if there is any inkling that there's gonna be pushback from the managing agent in respect of any respective termination.

Amanda Farmer: Yep, that's my recommendation.

Well, my frustration this week ... and I spoke about by-laws a few episodes ago, and I'm gonna talk about by-laws again. They seem to be a frustrating thing at the moment in strata land.

The registration of by-laws under the new law here in new South Wales, many managers would or should know this by now, land and property information, which is where we register our by-laws. They want consolidated sets of by-laws lodged. So anytime that you are resolving in a meeting to add a by-law, repeal a by-law, amend a by-law, you then go off within six months; that's the new time period, within six months you must register that change with the LPI. And when you lodge your new by-law or amended by-law, it has to be accompanied by all of the other by-laws, so one whole set of by-laws.

Now, many schemes don't yet have a consolidated set of by-laws. They don't have one single document that contains all of their by-laws. Some schemes do, because they have very organized strata managers or committee members. But, a lot of them don't. So their by-laws are sort of in droobs and drabs, a document here, a document there, and they get sent to us for registration. And we have been going back to the strata manager to say, "Thanks to this we will register it, but we need to register it as part of a consolidated copy. Do you have a consolidated copy? And if not, would you like our help to put that together"? And some managers say, 'Yep go ahead, put together a consolidated copy. I'll send you all of my various copies of the by-laws, and you can have your assistant paralegal put all that together. And others say, 'We don't, but we're going to do it ourselves' and have their strata assistants spend a few hours putting those together.

Now, the interesting question that came up this week, who should pay for this exercise? Where a lot owner is for example, renovating their bathroom, they're effecting water proofing so they need to have a by-law. The by-law is resolved in a meeting, then needs to be registered so the owner can go ahead and do the work. And we, acting for the owner in the registration, say to the strata manager, 'Please send us a consolidated copy of the by-laws'. They say they don't have one. We say, 'Well, we charge about \$250.00 to put the consolidation together for you. It's really a typing exercise. Takes a few hours for our assistants'. And they say, 'That's fine, do that if you want, but we're not paying for it. Your client is the one, the lot owner, who wants the by-law registered.



Publication Date: March 29, 2017

**YSP Podcast Transcript: Episode 054. In Conversation with Reena Van Aalst – Is An
Unsigned Agency Agreement Valid?**

They should pay to get the consolidation done'. And it's something I wanted to put out there and ask you, Reena, is that right? Do you think the owner's corporation should pass the buck onto the lot owner? What do you think is fair in that situation?

Reena Van Aalst: No, I think the fact that the Owners Corporation has to have a consolidated set of by-laws now under the new act means that they should be doing it anyway, and so, this is probably just bringing that process forward and therefore, yes, they should definitely not be charging the owner, who has a right to have a consolidated set of by-laws provided to them.

Amanda Farmer: Yes, that was my view, and for exactly that reason; it's an obligation of the owner's corporation now to keep a consolidated set of by-laws just because the first time that you've had to deal with that obligation is when a lot owner is registering a by-law doesn't mean that that lot owner suddenly becomes responsible to carry out your duty and to pay for that.

Reena Van Aalst: Yes.

Amanda Farmer: So, interested to hear any contrary views that might be out there.

Reena Van Aalst: So, Amanda, if you don't get that set of by-laws within six months, which is obviously the new requirement, what happens then? I mean are you just able to register it by itself or how does it work? What would the LPI do, do you think?

Amanda Farmer: Well, you can register a by-law after six months from the meeting, assuming you're talking-

Reena Van Aalst: Yes, but I mean ... But, let's say you get to the meeting just before six months and you don't have a consolidated set of by-laws. Can you just go and register it on its own?

Amanda Farmer: No, they won't accept it. They just won't accept it. So, if you're ... The way I would frame it is to say the by-law lapses within after that six-month period, so if you can't get it registered and LPI refuses to register it without a consolidation, then you're gonna have to go back and hold another meeting.

Reena Van Aalst: Yes, so I think this is a good example to our listeners out there that Fanny scheme, this thing that you really should get onto this, now it's nearly been what, three or four months since the Act has been proclaimed, and I think a lot of us probably don't understand the importance of having a consolidated set of by-laws. So, I think for people listening out there; managing agents and even strata committees just make sure that this is undertaken. And, as you said, there are lots of people that are doing it either themselves as managing agents just charging an admin hourly rate or lawyers doing it, so I supposed whatever is the most time-effective, value for money method should be undertaken.

I mean sometimes I don't believe the managing agent probably has the resources or you want to make sure that there's no mistakes as well because if a by-law has been omitted in the consolidation then that's another problem as well if you've just given it to your junior typist in the office to do and you haven't checked it thoroughly.

Amanda Farmer: Yep.

Reena Van Aalst: That could be an issue as well. So, maybe getting professional people to do it is the way to go. It's a one-off thing anyway.

Amanda Farmer: Yes, as much as I don't like to put myself in the firing line, I do say at least if you've got a lawyer involved you've got someone else to blame.

Reena Van Aalst: Yes, exactly. That's right.

Amanda Farmer: And I think one of the issues that's holding people up; committees in particular, from getting this done is that they know they have to review their by-laws by the 30th of November this year; so 12 months from the new legislation coming in,

Publication Date: March 29, 2017

YSP Podcast Transcript: Episode 054. In Conversation with Reena Van Aalst – Is An Unsigned Agency Agreement Valid?

and we've had some committees say, 'Oh, Amanda, I can't be bothered doing a consolidation because we're gonna do a by-law review, and we'll sort it all out then'. So, they're waiting until they complete that process, and the message I want to send is, as you are Reena, don't wait; get your consolidations together. The fact that you want to do a review is not a legitimate excuse, it's not good enough for LPI. Go ahead and do those consolidations, it's a typing exercise for somebody, and don't pass the buck onto your lot owners. Not really a good look.

Reena Van Aalst: Yes, definitely not the way to go.

Amanda Farmer: Okay, excellent. So, what's gone well this week? What's your win, Reena?

Reena Van Aalst: Well, I actually had an owner contact me about an exclusive use area issue that he has in his scheme; it's a block in the northern beaches. Basically, photos pretty much show that the area is adjacent to his lot and there's a fence so really, it's common property, but no one else can access it. Unfortunately, the owner's corporation granted the other lot owner on the other side of the block consent to have an exclusive use by-law passed for him. But, there seems to be some change of ownership within that scheme since that time and now, the owner's corporation and the new strata committee won't entertain that at all.

So, I've noticed that in the new Strata Living Handbook there's actually a section in the mediation part where you can actually go to try and mediate this issue. So, I sent this owner a copy of that part of the Strata Living Handbook and I'm gonna be working with him hopefully to be able to convince the owner's corporation that in a sense, there's nothing ... Like no one else can use the area, and at the moment it's totally unmaintained; grass is growing and it just looks terrible.

Amanda Farmer: Just going back to that Strata Living Handbook, is that the new handbook updated with the new New South Wales law?

Reena Van Aalst: Yes, and it's actually, I've got it here, it's actually page 42 for those that have a copy.

Amanda Farmer: Can you get it online or you order it?

Reena Van Aalst: Yes, no, I've actually downloaded it online.

Amanda Farmer: Oh, perfect. I'll get the link to that and make sure it's in the show notes. That's a real good handbook for our listeners.

Reena Van Aalst: Yes, and on page 42, which deals with common disputes, it says, "How to obtain exclusive use of common property" and then "Steps to resolve the issue. Number one, submit a motion to the secretary requesting exclusive use of common property", that's page 30, and "Number two, a common property rights by-law must be passed by a special resolution, and your written consent as an owner is also required".

So, I mean this is a good way to show our listeners that this is now included in the current Strata Living Handbook, and it is one of the common disputes that people have. I tend to find in some buildings people say no for the sake of no because why should I give something away? Why should that person have something that I don't have? And sometimes, people on the ground floor do have courtyards or areas that are common property that in a sense, no one else can use. You wouldn't want to use it because you're sort of right next to someone's property and you can sort of see people sitting around in their apartments.

But, they just refuse to let anyone else have it. It's like if I can't have it, why should you have something more than me? And even if people wanted to offer some sort of remuneration to the owner's corporation, even though in terms of the value I mean what is the value to the owner's corporation of that land that no one else can access? I mean I don't think it's gonna be that great.

So, I just think sometimes people have this mindset about not wanting to give away anything that they don't have rather than thinking well, it's not being maintained, no one else can use it; this person could use it, why not just grant them exclusive use and



Publication Date: March 29, 2017

YSP Podcast Transcript: Episode 054. In Conversation with Reena Van Aalst – Is An Unsigned Agency Agreement Valid?

they have to maintain it and undertake any repairs if necessary to that area? So, it's just something that hopefully we'll see how that goes. I think that having it in that Strata Living Handbook has been a good thing because it helps to bring that issue to the forefront.

Amanda Farmer: Yes, definitely. And an important legal point, I suppose, to remember there is that owner's corporations can't act unreasonably, so, as you say, Reena, where they are refusing just for the sake of refusing, if this ever reaches the stage of litigation that's not gonna be good enough; they have to come up with reasons why it is not appropriate for this owner to have the use of that part of the common property. And, unless they have those reasons, and those reasons are logical and convincing, then it's quite likely I think that the tribunal would order a by-law or common property rights by-law granting use of the common property to this owner should be made.

Reena Van Aalst: Yes, I believe that that would be the case also, Amanda. I've actually seen pictures of the area and no one can get to it so the grass is knee-high so something should be done about it anyway. They should be maintaining that area at the moment while that area is still deemed to be common property, and the strata committee is refusing to do that also. So, it's I think a two-edged sword in this case; it's refusing to maintain common property and also, not allowing the owner, without any valid reasons, to have exclusive use of that area.

Amanda Farmer: Yep, sounds like a good argument. Keep us posted on that one.

Reena Van Aalst: Yes!

Amanda Farmer: All right, well, my win for this week, this one's a little bit of a personal one, but I want to share it with the listeners because I think it will resonate with some of our strata manager listeners out there.

I was contacted directly by a strata manager this week and let's say we'll call her "Sandra"; we'll protect her identity of course. Sandra is a strata manager in Regional New South Wales, she listens to the podcast and she's also a member of the YSP online community. She has what sounds like a booming strata management business, she's on her own; she doesn't have any staff, yet anyway, and she is really struggling to keep up; to keep up with the work, to keep up with the new work that's coming in, the requests that she gets from her clients, from her committees, especially now that the new laws are in place in New South Wales, and she's trying to keep on top of what all the changes are.

Now, she contacted me knowing that I have been in the sector for a significant amount of time, I am very much an advocate for women and for women in business, and she wanted to know if I had any advice on how to work smarter not harder. We ended up having a telephone conversation and first, I congratulated her for reaching out and that was a wonderful first step because she was really at the end of her tether. She was saying to me, 'Look, Amanda, I think I should sell and I should get out and it might be time for retirement' and I said "No, don't do that, never take those steps when you're in that kind of frame of mind. You've done the right thing by reaching out and I think what you're probably suffering from is some isolation; not having those contacts that we might have in the big cities, not having those other women, other people to network with, to share your experiences with.

What I was able to do was to point her in the direction of some like-minded business people who she can turn to for support; somewhere where she might be able to find a mentor, somewhere where she might be able to employ a consultant who can come in and put some systems in place in her business, some procedures, let her know what kind of software she should be using specific to strata.

I'm sharing this because I think it is a common frustration for overworked strata managers; that they just don't know or can't see how they can get on top of it all. I think just reaching out and talking to friends, colleagues, others in the industry, and discovering that there are others out there experiencing just the same frustration, the same stress, that can go a lot of the way too at making you feel better and getting some direction as to where to go to solve your problems. And I think when you're in a regional area, those problems are all the more stark.



Publication Date: March 29, 2017

YSP Podcast Transcript: Episode 054. In Conversation with Reena Van Aalst – Is An Unsigned Agency Agreement Valid?

So, my message here is don't forget to ask for help when you need it, preferably before you need it. Those who are the most successful in life I think plan for problem periods and so that when they come up then they're not all too difficult to deal with. So, a special congratulations to that particular listener for reaching out, and I hope all is going well.

Reena Van Aalst: Yes, I think it can be quite overwhelming when you're in business because there are so many different facets to running a business, and I think a lot of people perhaps embark on it without sort of knowing the ins and outs of everything. So, I think professional help is a good way to go, Amanda, and perhaps getting maybe some part-time staff as to alleviate the load might be good for those administrative tasks once she's got the procedures in place that were put in by the consultant that will help a lot with stress, I think.

Amanda Farmer: Yes, and it's that real key to working smarter not harder; sometimes you have to slow down before you can speed up, so she does need staff and it was the first thing that I recommended. Just get an assistant who can delegate these particular roles to that she was struggling with, which were classic for an assistant to take on. She said, 'I don't have the time. I don't have the time to find the right person and to interview'.

Reena Van Aalst: And train.

Amanda Farmer: And I said, "Well, that kind of thing you just have to make the time". So, stepping back and doing that planning and it's nerve-racking because you've got to take time away from the business to do those kinds of things, but the results that you then have once you put those systems in place will just be exponential.

Reena Van Aalst: Yes, and I think also, people don't understand the effects of stress on the body.

Amanda Farmer: Oh, yes.

Reena Van Aalst: So, sometimes you think that you may be going plain sailing, but the damage to your body in terms of stress is something that perhaps won't be seen for years to come and by that time ... Because basically, what happens in stress is that your body's in that flight and fight mode constantly, cortisol is being released from your adrenal glands, and unfortunately when there's no ... And the parts of the brain that deal with that, which is the prefrontal cortex, pretty much ... Now, I'm going into the scientific part-

Amanda Farmer: Hmm, is this your medical expertise?

Reena Van Aalst: No, I'm reading on that; I'm actually reading at the moment. It's actually called On Managing Yourself and these are articles ... It's basically, HBR's 10 most reads of the Harvard Book Review.

Amanda Farmer: Okay.

Reena Van Aalst: Some of these articles have been written Amanda, like 10 years ago if not longer. One that's really struck me is called, Manage Your Energy Not Your Time, because once you've managed your energy in terms of getting enough sleep, being organized, eating well, the rest of it will come into place. Some of the time-setting measures they talk about is like doing the most complicated or harder tasks in the morning, first thing; blocking out time for emails and telephone calls. So, saying, 'Okay, I'll do one hour of emails now, one hour of telephone calls', for example.

Because, as we know, there's been a lot of studies that say every time you get interrupted it takes you two or three minutes to get back into that set mind. So, I'd recommend this one actually. It's called, On Managing Yourself, HBR's 10 most reads.

Amanda Farmer: Excellent.

Reena Van Aalst: So, yes, I would recommend that to anyone; listeners out there, strata managers, or any other professionals



Publication Date: March 29, 2017
**YSP Podcast Transcript: Episode 054. In Conversation with Reena Van Aalst – Is An
Unsigned Agency Agreement Valid?**

that are working in other professions where stress is prevalent in most of our working life, where there's high ... Lawyers, accountants. A lot of us are sitting at desks all the time.

Amanda Farmer: Oh, yes, that's another killer isn't it? Sitting is the new smoking, I heard.

Reena Van Aalst: Yes, that's what they say, and so getting up and having a break for at least five or 10 minutes, going for a walk.

Amanda Farmer: Yes.

Reena Van Aalst: Yes, so it talks about all those things and also, the other thing I like about it Amanda, it has like a little summary at the beginning of each chapter so it has like idea in brief and then, it talks about idea in practice.

Amanda Farmer: Great.

Reena Van Aalst: So, it's very short-sized bits to read as well.

Amanda Farmer: Excellent. Well, I'll look that up and make sure there's a link to that one in the show notes as well so our listeners can get stuck into that. Awesome. Wow, what a value-packed episode!

Reena Van Aalst: Yes!

Amanda Farmer: All right, so don't forget to let us know what you think of this format; Amanda and Reena in conversation. Pop your comments into the comments section below this episode at www.yourstrataproperty.com.au/podcasts and let us know of your questions or suggestions for topics that you'd like Reena and I to have a chat about. I hope to hear from you.

Thanks for today, Reena!

Reena Van Aalst: Thank you, Amanda. 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?

