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## YSP Podcast Transcript: Episode 058. In Conversation With Reena Van Aalst Agents Throwing Out Records and Creative First Home Buyers

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**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 doing very well, thank you. This is another one of our Reena and Amanda in Conversation where we talk about the week's challenges and the week's wins. How's your week been?

**Reena Van Aalst:** Oh, it's been pretty good actually. I've been quite busy, but apart from that, it's actually been quite productive, which is good.

**Amanda Farmer:** Yes, I have been doing a bit this week on the YSP Membership site and building up some content, and getting excited about what we're delivering for our members there. So that's where my head's been at, which is sometimes a nice break from the cold face of a legal practice.

**Reena Van Aalst:** Yes, it's a creative side that you can actually give some time and attention to.

**Amanda Farmer:** Yes, definitely, and I do enjoy that. Let's jump straight in Reena. What has been your challenge this week?

**Reena Van Aalst:** On the 25th of March, Strata Community Australia in New South Wales had their Owners Day at the Masonic Center in Govan Street, which is quite a wonderful day. And I just wanted to mention that online for everyone to sort of understand this is an annual thing that's undertaken, and members should try and get to that as well. And one of the owners in the audience actually raised an issue about their records being thrown out after the statutory period.

**Amanda Farmer:** Right.

**Reena Van Aalst:** And they're actually in a legal case, so they obviously needed their records for a period beyond that. And it was really hard for people to understand I think, even when the panel was trying to answer the question, that basically as an agent, you are the custodian of the records. They're actually not your records to do what you want with them.

Now in the Act, it talks about Section 180 relating to records being retained for a statutory period. It even goes through what records should be kept. You know, basically, the following have to be retained for 7 years: the new records, statuses and orders required to the cabinet's division, minutes of meetings, financial statements and accounting records, correspondents etc. So it's quite a long list there that talks about what has to be kept. And I think what agents have done historically and I know many people have done is because I've worked in a practice previous to the one that I'm in now where ... Let us go into the archive room and then look at the last date, and they just start with the one that's one year over the statutory period. Without actually going back to the owners corporation or the strata community and I've seen them, "Well, these are the records that we've got that seven years has now expired. What would you like us to do with them?"

So managing agents I think should understand that you really can't throw away the records without actually getting the consent of your principal, which is obviously the owners corporation in this instance. And when you take on new schemes, sometimes what I found is that sometimes I don't even have 7 years worth of records handed over.

**Amanda Farmer:** Yes, I would think that that's unusual. That's certainly been my experience having to go and conduct inspections for legal cases that sometimes I can't get more than the last 3 years.



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**Reena Van Aalst:** Yes, that's right. And even though it may be in the archives in a manner, like sometimes it's not actually on hand because of the affected boxes. But the issue is that sometimes agents are not ... They have actually thrown legal files away, and if someone is throwing legal files away someone said imagine would never throw away the minute book. I mean, yes, but then why would you throw any other part of it away?

**Amanda Farmer:** Exactly, yes, where's the line. Now, what I'm interested in here, does the agency agreement say anything about the agent's obligation to keep the records? Is this dealt with in the Standard Agency Agreement?

**Reena Van Aalst:** Yes, especially, that's a really good question and I shall have a good look at it, but I would have thought that in terms of under the Property, Stock and Business Agents Act segment is that you have the law of agency. That concept where you would require your principal's consent, to do that would override that. But actually we'll have a look at the agency agreement and that's a very good thing to look at actually. I think I'm really ...

**Amanda Farmer:** Yes, what I'm getting at here is, and we do the same thing as lawyers, of course, we have to hold records on behalf of our clients. And I know that we do in my practice deal with this in the cost agreement. So in the retainer contract, we say that we will hold your records for a period of 7 years, and after that 7 years you agree to us discarding those records. And on signing the cost agreement, you are therefore agreeing that those are the terms of our engagement. So you're actually giving us consent at the time of entering into the contract, and I wonder if agency agreements deal with that? If they don't, query should they? And does that protect the agent if they have a clause that is allowing them down the track to discard records without getting that consent because ostensibly they already have it.

**Reena Van Aalst:** Yes, well I think in the case of lawyers, you don't actually continually act for a scheme for 7 years.

**Amanda Farmer:** Yes, good point.

**Reena Van Aalst:** Normally, you're there for one or two years at the most, hopefully. I know that this is a contagious matter, but ... And then you don't have much connect with the client, whereas as an agent you're always in connect with your committee. So to me, it's just, to me, it would just seem common sense just to send a quick email to the committee and say, "We have X amount of boxes, do you want to keep them here or do you want us to send them to the building or discard them?" Oh, sorry, I might even keep them here and discard them or, yes, send them to the building. So, yes, I'll actually have a look at them at the ACA Standard Agency Agreement, and see if it deals with that. It's a really good point.

**Amanda Farmer:** Yes, and let's come back and have another chat about that one.

**Reena Van Aalst:** Yes.

**Amanda Farmer:** Okay, so my challenge for this week, we've talked a little bit on the show, Reena, about agency agreements under the new New South Wales law, and what's happening to them come 30 May 2017. For those agreements that are on rollover, our new legislation here says that they are automatically going to come to an end on the 30th of May this year. And I know you were saying as in my lots of buildings and strata managers scrambling to get new agreements in place, and buildings looking around for new strata managers. And a question that has come up around this new legislation is if an agreement is on rollover and the legislation says it's going to expire on the 30th of May, does the owners corporation still have to give three months notice of termination if they want that agreement to end? Because the standard agency agreement does say that an owners corporation who wants to terminate the agreement after the expiry date, must give three months notice in writing to the managing agent.

So, on the one hand, we have the legislation that says if you're on rollover then your agreement's automatically going to end on 30th of May. And then we have the contract that says you must give three months notice. So I have been asked by building and also by a strata manager which prevails basically? Does this building still have to give the 3 months because we have the legislation that says it automatically expires?



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**Reena Van Aalst:** Yes, well, the delegation is terminated basically after faith in that account. The manager really can't continue to act on behalf of that owners corporation.

**Amanda Farmer:** Yes, so my advice has been, well, the legislation trumps the contract, we have a statute telling us that this agreement is going to come to an end and the agent is going to lose their power. So even if the owners corporation hasn't given that 3 months notice, then my view is that agreement still comes to an end, and that's the advice that I've given. Do you agree with that Reena?

**Reena Van Aalst:** Yes, that's right. I think the matter of I had a scheme that came to me because a lot of them are having their AGMs in April and some early May. And I've been asked the question in terms of the 3 months notice etc. So, yes, I think after you gave the advice that I agree that that should be the case because the Act overrides any contract. And basically, and I think agents, some agents are aware of this, some agents aren't aware of it. Some agents actually have their own agreements, and I've seen one where it's only a month's notice that's needed. So it's probably a bit easier, but the ones that had the 3 months, I think I'm not sure if any agents would try and force a payment of that notice period not being worked through. So I think it's another issue, but I'm not sure of how that would work for some account managers.

**Amanda Farmer:** Yes. Well, we'll certainly see that crop up I'm sure as we get closer to that date, but certainly, as far as I'm concerned, the legislation says the agreement comes to an end. Even if notice hasn't been given, it comes to an end on the 30th of May. Okay, let's talk about some nicer things perhaps, Reena, some wins for this week?

**Reena Van Aalst:** Yes, I was actually going to mention the same thing in terms of what you just said where the contract doesn't end, doesn't on the 30th of May, that was going to be what I was going to mention. So thank you for bringing that up.

**Amanda Farmer:** No worries, what's happening in your world with the 30th of May?

**Reena Van Aalst:** Yes, I've got quite a few buildings that will be coming on so, yes, I'll be very busy. That time period's actually I think for a lot of the managers whether they're taking on new schemes or getting ready to hand schemes over, I think that period, the next 6 weeks, is going to be quite busy I think for lots of people.

**Amanda Farmer:** Yes definitely, all good stuff though if you're in the strata sector in whatever capacity.

**Reena Van Aalst:** Yes.

**Amanda Farmer:** Well, something nice that I wanted to talk about today, Reena, I had a very interesting conversation with some people who have now become my clients. They are a young couple with a young family, and they want to buy into strata. They're renting at the moment and they want to basically buy their first home, and they are entering the Sydney property market and of course, it is highly competitive. And they are pretty much priced out of buying a unit, let's say. So they have gotten a little bit creative and they have said we are going to make an offer to a strata building to purchase part of the common property.

And the part of the common property we have our eye on is the roof space. And they haven't actually got one particular building in mind, they have a number of buildings in mind in their local area, which they like very much. They have gone to visit these buildings just on the street and had a look at them. They have found the strata plans and had a look at the strata plans. They have spoken to the council, and they are planning to approach the people who live in these buildings and say, "Hey, are you guys are willing to subdivide and sell your roof space to us?" And when I say roof space I mean internal attic space, let's call it.

**Reena Van Aalst:** Oh, you don't mean like an overview of roof space?

**Amanda Farmer:** I don't mean the roof top, yes.

**Reena Van Aalst:** Yes, that's what I was thinking. I was thinking, "Wow, that's pretty gutsy."



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**Amanda Farmer:** There are a few, yes, there are a few buildings around it that is very well suited to, but I'm not sure my clients are in that market. The attic space I should say, which they can then renovate and create their own small unit in there. And they have approached me to guide them through this process, the process of not only the negotiation with the owners corporation, which will ... The first step will be through the strata manager, but also the contract to the sale, and the subdivision process, if a purchase price and a sale can be agreed.

And after having this conversation with this young couple, I was just so inspired and I thought, "Hey, these are people who see a problem, they're not going to be defeated by it. They want to own their home in one of Sydney's inner suburbs, close to the water and they're going to can find a way to do it." And they said that this practice is actually not that uncommon in Europe. Even though in my experience it's not that common here in at least in Sydney. So I'm really excited to see that play out, and I really hope that we can engage with a few buildings who are interested in engaging with them and I just think it's a win-win.

**Reena Van Aalst:** When you say roof attic space, like what sort of area are we talking about in terms of size?

**Amanda Farmer:** Yes, well they have been able to identify buildings where they can track down the architect. So what they've done is they've found the building, got the address, gone to the council, been able to track down architects who are familiar with the area or who have done some work within the building. And then they've spoken to these architects and they have told them, "Yes, I know that building, and that has a significant roof cavity you call it, which yes you could make into a livable space." And in some cases there are plans for the building within council, so they've been able to see those. It's just a bit of a guess job at this point in time, but that's where the conversation starts, "Hey, are you interested? Can we come in and have a look and see if this is feasible?"

**Reena Van Aalst:** So would it be like more of a studio apartment type of thing or could it be larger than that depending on how ...

**Amanda Farmer:** Yes.

**Reena Van Aalst:** Yes, so it's quite an interesting way to try and get into the property market, it's very innovative. I think, yes, someone was saying at the SCA Owners Day, that in Europe in terms of like floorboards and things like that, where people talk about various codes and VCAs, you have a set of floorboards for over 50, 60 years. So sometimes I think we lag behind some of the innovation and the practicalities that exist in other countries where apartment living has been prevalent for a much longer period.

**Amanda Farmer:** Yes definitely, and I think it is that cultural shift. We do in Australia have this concept of our own space, our backyard, our quarter acre block. And that carries over, unfortunately, I think, to community living, where people say, "Well I have a right to do what I want in my home, to not be impacted by those around me." I think you're right, Reena, in communities like Europe and I, think the US is better at this as well where this multi-owned property living has been going on for much longer. People are a lot more accepting and forgiving, and understanding, and this is just the way we live.

**Reena Van Aalst:** And also too in Europe, Amanda, in terms of the rental situation that you don't have short leases like we have in Australia, which are 12 months or 6 months. In Europe, families can live in an apartment for like 10 or 15 years as long as you have generations living there, there's more protection I think. So it's really their home as opposed to whereas in Australia I think people want to get on their own home because in a sense you don't know when your landlord is going to want to move back into the apartment or renovate or sell. And there's always that short term feature that exists in the back of your mind when you're renting that this is not really going to be permanent, and it's just permanent as the landlord wants to move back in, sell or renovate etc.

**Amanda Farmer:** Yes absolutely, and I think that's a key point of difference definitely that changes the way we perceive property here in this country.

**Reena Van Aalst:** Yes, and I think ... I'm not sure if you saw the recent price increases that were in the media. I think Sydney was

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18.9% compared to Perth that was -4.7 or something like that. So Sydney and Melbourne were the highest two, yes, with double-digit increases over the last 12 months, which is making I think a lot of people ... It's getting harder to buy property, but also I think the people that are owning strata apartments who obviously they will see increase in the value quite significantly in a very short period of time.

**Amanda Farmer:** Yes, it plays into so many different factors, doesn't it?

**Reena Van Aalst:** Yes.

**Amanda Farmer:** Strata managers then being responsible for these multimillion dollar assets to an extent, and committee members, volunteer committee members, often with no experience or education in this aspect of managing these very valuable properties.

**Reena Van Aalst:** Yes, that's right.

**Amanda Farmer:** Okay, well, I think that's it for this week, Reena. Is there anything else you want to add?

**Reena Van Aalst:** No, not at all, Amanda, all good. Thank you.

**Amanda Farmer:** Excellent, I will catch you next time.

**Reena Van Aalst:** Okay then, bye.

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