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YSP Podcast Transcript: Episode 062. In Conversation With Reena Van Aalst – Proxy Forms Under New Law And Who Can View Strata Records?

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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 today the lovely Reena Van Aalst, hi Reena!

Reena Van Aalst: Hi Amanda, how are you?

Amanda Farmer: I am doing very well, Alice News can't see you but I can, because we record this over Skype video and you are today the lady in red, you look stunning, I have to say.

Reena Van Aalst: Thank you, thank you very much.

Amanda Farmer: How has your week been?

Reena Van Aalst: Actually been very very busy, actually had a few meeting this week and meeting up with old clients and prospective clients and yes, it's just been quite a nice you know, pace again instead of ramming up again with the end of 30 May approaching and some issues relating to contracts expiring and that sort of pressure that a lot of prospective clients have come to me about some of this to the last minute to get proposals so yes, it's all been interesting. And what about your week?

Amanda Farmer: My week has been very good, thank you, we do find I think this cycle throughout the year that it's kind of crazy in the lead up to Easter, and then we have a bit of a breather after Easter, and then we get crazy again leading up to the end of financial year so I think all businesses feel a bit that way. But we did hear, and I'm not sure if this will be the case when this goes to air, but we did hear in the grapevine that maybe that 30 May date might be extended in New South Wales for agency agreements. We'll be keeping an eye on that.

Reena Van Aalst: Yes, well, RSEA President Chris Duggan has been talking with the Office of Fair Trading in relation to trying to extend that so on behalf of the members of SEA, it's being advocated through the black channels, so we'll see.

Amanda Farmer: As soon as we hear about that, we will get the word out so that the buildings who are scrambling to have meetings and appoint their new strata managers or reappoint their current strata managers can relax a little bit maybe.

Reena Van Aalst: Yes, maybe.

Amanda Farmer: All right, let's jump into the week's challenges, Reena, what's been challenging you this week?

Reena Van Aalst: Well, along the same topic that we just discussed, I've had 2 prospective clients, one who is actually a community management scheme so they're not affected by the current strata scheme changes. But there's been a committee that's been trying to control things and in the AGM agenda they have issued to all the owners, I've asked that all proxies have to be provided to the secretary or the managing agent 5 days before the meeting, that won't accept any proxies at the meeting. And so what I've advised these clients is that's not the case, that with community line management acts that doesn't apply, and this only applies to strata scheme ... and even that doesn't apply in terms of having 5 days, obviously large schemes over 100 lots have a 24 hour provision where they have to have all proxies in 24 hours before the meeting, but that's the way it is.

So, it's funny how sometimes people can be told things that are totally incorrect and the majority of people actually believe that they couldn't have a proxy submitted just before the meeting. So, it's a way to disenfranchise people from having their vote heard, so it's quite alarming that a strata managing agent would actually, even though they know that's not correct, but that was a



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committee instruction. I think as an agent, one thing that we all have to learn, is that you can't give out wrong advice or incorrect advice, or even illegal advice just because your client puts pressure on you. Because at the end of the day, you're the agent, you're the one that's got the professional experience and you've obviously got your PI insurance so, in a sense, you don't want to be sued because you've unfortunately not been strong enough to say no.

Amanda Farmer: Yes, absolutely. And I think it's fair enough that owners do rely on the advice that their strata managing agents give them, they're paying them, they see them as the professional and expert in the area and something like that, it's not a technical point of law. A strata manager should know what the rules are or when your proxies are in for a community scheme as opposed to a strata scheme as opposed to a large strata scheme, so that is quite alarming but lucky that those owners had somewhere, someone, yourself to go to and clarify that and I think that's the key here, knowing where those resources are, where to go for good accurate advice and information.

Reena Van Aalst: Yes!

Amanda Farmer: Okay, my challenge for this week, Reena, hopefully, a quick one, this is one that you already know about because I turned to you for advice. Proxy forms under the old act. Now, this was a question that one of my members inside the YSP online membership community raised and the question was, "Proxy forms completed under the old New South Wales Act that appointed a proxy for a period of 12 months, is that form still valid under the new Act?" And I sort of could have seen this one both ways, so I reached out to you, Reena, and sought your opinion. Do you want to share that? Put you on the spot. No? Okay.

Reena Van Aalst: I'll let you share it.

Amanda Farmer: So, your view was that yes, those forms are still valid and that's because our new Act basically in short summary says that anything that was done under the old Act is still valid under the new Act.

Reena Van Aalst: Yes. There's transitional provisions.

Amanda Farmer: Yes, so there are transitional provisions that cater for that situation. I originally had a different view and you did convince me that your view is correct but my initial view was that the new Act requires proxy forms to be completed in accordance with the template that set out in the regulation, and obviously the template that's in the current regulation is not the same as the one that was in the regulation relevant to the old Act. So, on a very technical literal reading of the section, your proxy form does not comply with the template that's in the regulation, so may not be valid. There is a principle of statutory interpretation that provides something along the lines of interpreter sections so that it does the least harm and I think, Reena, your interpretation is sensible and in my view, correct, and until maybe the tribunal takes a view on this, that shall be my position also.

Reena Van Aalst: Yes, I think the reason I said that is because it's about not disenfranchising people from voting, so with the new Act they're giving you, because of the proxy limitations, that alternate form has been established to allow if one person's already got one, you can give it to somebody else. But under the old Act, you can either give it to one person so I suppose in the event that the proxy bearer has been only given one proxy and that person doesn't have any other proxies, then that would then allow that person to vote on behalf of that lot owner, so I think that's how I've interpreted it anyway.

Amanda Farmer: Yes. I think you're right and no doubt that's how most managers are approaching it. We'd love to hear from listeners if they've had a different experience or have a different view. All right, what's been going well this week, Reena, what is your win on the board?

Reena Van Aalst: Well, one of the wins that I've had this week is from an old client, again, who needed some help and the question relates to who's entitled to see the records of the owners corporation. So in this particular scheme, the committee went out to tender for a new strata manager and a new building manager and this owner who had been on the committee in previous years wanted to have a look at the tenders that had been received in order to be able to compare what the committee hadn't seen and therefore, the decision-making process as to why they had put forward the particular ones on the AGM agenda.



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So instead of saying "Well, you need to do a search," which is really the correct thing to say, the secretary of this particular owner's corporation who's got his own email address for the building and pretty much running it the way that he wants to said to the owner, "Well, no, I'm sorry, you can't look at it, it's commercial-in-confidence information." And I said, well that's not correct, that any lot owner is entitled to inspect the records at the manager's office or wherever the records may be kept ... In this particular case, some are kept on site and some are kept at the manager's office. So basically, I was happy that at least when I gave him the advice and he went back to the secretary, the secretary had to concede that yes, he was legally allowed to look at the records, so I think for Alices out there and managers the only thing you can restrict perhaps privileged information if there's a legal case going on but apart from that, whatever the records are, their corporation must keep, those records can be inspected by the lot owner or anyone they authorize to inspect those records on their behalf.

Amanda Farmer: Yes, this is a question that I see come up time and time again and unfortunately, I see bad wrong advice given to committee members and lot owners as to what they can and can't inspect in books and records. I have actually spoken about this on the podcast before and if you check out [Episode 30](#), which is titled 'How Private Are Owners' Personal Details When it Comes to Strata Books and Records', that specifically goes to a situation where a lot owner wants to inspect the books and records of the owners corporation and the committee or the strata manager has said, "Well, there are certain things in this record that you're not entitled to see," and 9 times out 10, that's wrong, and lot owners are entitled to the books and records as they are listed in the Strata Scheme's Management Act and that's really everything.

Everything that's held by the strata manager, all correspondence, the full strata role contact details of other lot owners as they are recorded on the strata role, and as you said, Reena, unless it is legally privileged, so if you are in a legal dispute with the owners corporation, then there's not much that can be withheld.

Reena Van Aalst: I think you're correct, Amanda, the strata role is statutory record that's kept by the owners corporation which contains certain information, but there are things that a managing agent collects that really aren't required under the act such as a person's telephone number, their mobile number ... I mean, previously, in terms of email addresses, unless there was a by-law allowing minutes to be emailed, then really, an email address should not have been kept by the managing agent and sometimes, people wanted to do searches to obtain those records to communicate directly with other people.

Now, under Section 263, you can give your consent specifically to have your email address as an address for service of notices and minutes of agendas, so that's changed in the new Act. But yes, I mean, I think the only thing that perhaps people may not want to divulge is that telephone number if I've given it to another owner, who perhaps they're in conflict with or ... That's anything I can say out of all the records that really perhaps could be an issue.

Amanda Farmer: The interesting thing about your example too, Reena, is that this happened in the context of a tender for building management services and there are commercial reasons why quotes should be kept secure and confidential and I'm not saying from the lot owners, but certainly from the tendering building managers, in order to make sure the process is as above board as possible.

Now, I have been involved in advising a large community association who put a significant contract for building management services out to tender, and what they ended up doing, recognising that this was a bit of a sticky area, was they engaged a property adviser, so a professional adviser who deals with these kinds of deals, and was able to conduct the process for them and ensure there was the right level of confidentiality without excluding lot owners and other members of the community who were entitled to see that information.

So if you're looking at a large contract that's worth quite a bit of money, it's probably worth having a chat to people like that, to make sure that you as a committee, are doing everything that you should be to ensure that process is above board and is not going to be challenged down the track and you're going to be able to deal with these issues that crop up about inspecting books and records and who's inspecting them, if they are inspecting them, should they be signing a confidentiality agreement?

I've been involved in those kinds of situations before where we've had lot owners sign confidentiality agreements because they're



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looking at documents that if others came to know about them outside of the community, would cause a problem, so that's another option. But yes, interesting example.

Reena Van Aalst: Yes. I mean, in this case, it's just building management and strata manager tender and I suppose, you know, it wasn't a huge contract, I think the one you're referring to, Amanda ... I mean, he just wanted to say what had been issued as a specification and what had come back in the rationale behind the community's decision, because in a sense, he felt that he hadn't had enough information in order to make a decision based on the recommendations, so yes, it's good to know that you can engage property people and other advisers with these confidentiality agreements, so it is a good thing to ... Yes, I'll be using in the future.

Amanda Farmer: Excellent! Now, my win for this week or the nice thing I want to report, I have been approached by the City of Sydney council to let listeners know that the City of Sydney is sponsoring the Environmental & Engagement Award at the upcoming CHU Strata Community Awards. Now, this is an award that recognises strata schemes that have improved their environmental performance and if you as a building do want to nominate for the awards, then nominations close on the 31st of May so you'll have a little bit of time once this episode airs, and I will put a link in the show notes to where you need to go to apply for that award.

So the building that won that award last year was Botany Cope, which was a 30 unit apartment building in Waterloo, and this is a building that was initially looking to install a huge solar panel, I think, and then they worked out they could actually get the same if not more savings from simply upgrading their lighting, which they did. They reduce their energy use in common areas by 61%, they have the cost of their energy bills, and they were a fabulous example of how an engaged and active executive committee can take advantage of these kinds of opportunities that are now available to improve and promote sustainability, and I know City of Sydney does have grants as well that buildings can apply for. I'll put the link to that information on City of Sydney's website, in the show notes also. So check that out if you're into sustainability and you want to improve your strata building in that respect or you want to apply to win the Environmental & Engagement Award at the upcoming Strata Community Awards.

Reena Van Aalst: That's wonderful. It's funny, 'cause City of Sydney have been doing a lot of grants for many years now with sustainability and other initiatives so they should be congratulated on that. Other day, I was listening to a TED talk, Amanda, it was Elon Musk, it's called 'The Future We're Building and Boring', which is his new venture, the boring bit, that ... He's actually got this house where the roof is actually totally made out of solar panels, and what he said, that the light of the solar panels, as the roof, so that is the roof, will be greater than your normal tile roof, so ...

Amanda Farmer: Isn't that clever?

Reena Van Aalst: So that was under the initiatives, yes, I thought that's amazing, and he talked about other things, such as having underground tunnels where you can have these cars that would go 200 kilometres an hour, so you could just get,... listen to the TED talk or watch the video.

Amanda Farmer: That sounds good. Yes, send me the link to that and I'll put it in the Shownets so listeners can have a listen, too.

Reena Van Aalst: Yes, so one day, we could be having solar panels as being your total roof on buildings and not having to have roof tiles anymore.

Amanda Farmer: Yes, why not? All right, lovely to chat with you as always, Reena, anything else to add?

Reena Van Aalst: No, all good, thank you, Amanda.

Amanda Farmer: Catch you next time!

Reena Van Aalst: Okay, bye!



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