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YSP Podcast Transcript: Episode 084. In Conversation: the problem with
compulsory managing agents

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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'm doing well, thank you very much. I am enjoying this lovely spring weather. Had a productive week. It was a scheduled to within an inch of its life but I do find if I don't schedule it, it doesn't get done. And now the list has been ticked off, so I'm feeling good. How about you?

Reena Van Aalst: Yes. I'm mostly looking forward to my trip to Tasmania. I've never actually been there before so, yes ... I'm looking forward to it.

Amanda Farmer: We're looking forward to hearing all about it.

Reena Van Aalst: Yes. Hopefully, the weather will have become warmer by the time I go, so yes. I'm looking forward to it. Just having another break.

Amanda Farmer: Yes. They have some lovely restaurants in Tasmania. I hope you're going to be visiting some of those, you're booked in.

Reena Van Aalst: Yes we're actually doing, I think, one of these tours, which is like a foodie tour so friends of ours that have travelled so many places around the world, and they said this is the best thing I've ever done. So I should look forward to doing that. Yes. I'll let you know how it goes.

Amanda Farmer: Let me know how it goes. Give us a link to put in the show notes.

Reena Van Aalst: Yes.

Amanda Farmer: Listeners can enjoy too.

Alright. So, what's been your challenge for this week, Reena?

Reena Van Aalst: My challenge has been a bit of a confronting one because I've had two owners who happen to be women in the building that have been bullied by this male resident. He has an agenda of his own at the moment and he went to one of the owner's work. He actually followed her knowing that she was going to be at work at a certain time and wouldn't leave until she did something that he had asked her to do. And she was a bit afraid of him.

The other owner, he actually was following her down the street in very very close proximity. And unfortunately both women ... This is not the first time that this particular owner has done this and they're quite terrified and afraid of him. Of course, I've encouraged the members to seek advice from their lawyer about what to do and in this particular case, one of the owners wants to get an AVO against him, because it's actually been not the first time that this has happened and she really is frightened of him.

See, when these things happen, where you live, Amanda it just makes it so uncomfortable because it's like your home should be a sanctuary. You should be able to go home and not have to deal with ... Sometimes at work, you know, you might have



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to deal with clients or colleagues and sometimes there could be unpleasant interactions from time to time, but when it's your own home and it's someone living there and there's been multiple events that have occurred but this is now like getting far more serious where it's like a stalking thing ... Literally stalking.

Amanda Farmer: Oh. How awful for those residents. Do they live alone in the unit?

Reena Van Aalst: Yes, they do actually.

Amanda Farmer: Oh gosh. Yes.

Reena Van Aalst: I've recommended to them, previously, when other events had been happening with this particular owner, that they should probably install some cameras because it's really important, I think, for some evidence to be able to be verified. Because at the moment, it would just be one person's word against another but I think if there was some camera footage, that would also really be helpful.

Amanda Farmer: Yes. Cameras are a fabulous idea. Because you're right. It's important that those women do. If they feel, as I've said on the podcast before, harassed, threatened or intimidated, they should be going to the police and seeking the protection of an AVO. But that in itself can be difficult if there is no direct or hard evidence of this intimidation and it is one person's word against the other. And one person is a bully and lives next door to you. And it makes it very difficult for you to then stand up and tell your side of the story and can be, of course, very frightening and confronting. But if you have that security camera footage, well that can tell the story for you and make not only the job easier for the court who's considering whether or not to grant the AVO but also for you as someone who needs to tell their story, security can just be gold in that situation.

Reena Van Aalst: Yes, exactly. Definitely. They are golden. With an AVO, obviously you have to go to court, and even that in itself is like a terrifying experience of people having to go to court and being worried about the fact that that might exacerbate that person's behaviour if it gets to that stage. So, yes. It's really unpleasant and unfortunate. I already feel sorry for these residents that have to put up with ... I had a situation in another scheme where it was a tenant that was causing a lot of problems but eventually with a tenant, the lease will come to an end or you can go to the tribunal and that may take some time, whereas, with a lot owner, you can't easily remedy a situation when lot owner is not necessarily going anywhere.

And in a sense, I think they want to leave, because, you know-

Amanda Farmer: Yes. It definitely does happen that way that unfortunately the victim is the one that feels that they have to move out of their home and sometimes they do because they think that this person isn't going anywhere and they can't stand it anymore. But we have discussed on the podcast before, the steps that you can be taking to try ... To try and address that behavior. To try and stand up to this person and as you say, you use the word bully, Reena, and I think that is an apt description. These people are bullies and they need the other residents in the building to stand up to them and say this behavior is not on. And hopefully those women in that building you're talking about can get the support of the other residents and feel a bit safer and a bit more protected when they know those people are standing with them.

Reena Van Aalst: Yes. It's definitely right. They do have their support, which is really good.

Amanda Farmer: Mm-hmm (affirmative). Excellent. Alright. Well, the challenge I want to talk about this week, Reena, is something that interestingly, a few clients have seen me about within the last few month, and I want to raise it on the podcast for that reason. Buildings who have had a strata manager appointed by the tribunal, so what we would call a compulsorily appointed strata manager. And this strata manager is appointed because the building is considered by the tribunal to be dysfunctional. And the strata manager is given the powers of, usually the strata committee and the owners corporation. They can be given certain powers or they can be given broad powers to do all things that the committee and the owners corporation can otherwise do. And they're appointed for a certain period. Sometimes 12 months, sometimes two years.



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And their role is to basically bring things into order. To get levies raised and paid again. To get important rectification works done, for example. And to get things done that otherwise, the owners weren't capable of making a decision on. There was a deadlock. Or whatever the reason was. Now, a few clients have consulted with me recently, have had problems once they've come out of a compulsory appointment. So the appointment's lasted 12 months or two years, whatever it was. And during the term of the appointed, the compulsory appointed manager has done certain things. For example, registered by-laws that the majority of owners now are unhappy with and are attempting to do undo. And there is a method to undo that, it's to apply to the tribunal for an order.

But I just thought it might be interesting to get your views on this Reena. I know you do some compulsory appointments and no doubt you've seen buildings that have been under compulsory appointment. I think from our point of view, we often say oh look it's something that is good, it is something that a building needs to be able to get things done, and it's not too often that we look at the other side and say well what if the wrong manager perhaps has been appointed under compulsory appointment. And it's often the applicant for the compulsory appointment who proposes who the manager should be and often the tribunal accepts that proposal and makes the order to appoint that manager-

Reena Van Aalst: That manager also has to consent to the appointment as well.

Amanda Farmer: Right. Yes. That manager has to consent. So what if that managers does things that may not, and perhaps this is in hindsight, but may not have been in the best interest of all of the owners. Perhaps they were speaking to just one owner in particular. They were taking instruction from that one owner in particular. And what's been done within the 12 months or the two years hasn't assisted the building as a whole. Have you had experience with buildings who are coming out of compulsory appointment feeling a bit hard done by?

Reena Van Aalst: Well, I've actually got one at the moment that I'm managing under a compulsory appointment that actually has that exact feeling, that they feel like the prior manager has registered a bar that they shouldn't have registered, apparently giving exclusive use to one of the other lots, which is obviously not their lot.

Amanda Farmer: So they've switched from one compulsory manager to you, Reena, and you're still under the current-

Reena Van Aalst: Yes.

Amanda Farmer: Okay, interesting.

Reena Van Aalst: Yes. So they've gone from one to me. And in this particular case the one who has come to me about the by-law is the one that actually opposed my appointment and wanted to put forth another agent, and obviously, that didn't happen. But I've said that I would look into it and have a look and see what the by-law says, because it's only, sort of, over the last few weeks that she's brought that to my attention.

I don't understand why a manager under a compulsory appointment would even go that far. To register a by-law, because unless something is so problematic that the scheme can't function without that by-law, which I think is highly unlikely that that would be the case.

Amanda Farmer: Yes.

Reena Van Aalst: I don't know why a strata manager in that capacity, under a compulsory appointment would even do that. What I try and do is put forward ... Let's say it's even levies or whatever it is and I just say okay this is what I'm thinking. Let me have your views. And you need to listen to all the lot owners and then after that, I make the decision. But at least I've considered the views of all owners. I think perhaps in the case that you're referring to, maybe it was a person that was the proponent of them having the appointment.

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And I think that is a bit of a concern when I've been put forward. Are you going to solve what the other person ... Because, you know, they put you forward and said I mean that even happens when there's a building with no compulsory manager where you have two factions, and I've had that as well where if someone's put me forward and the other side don't like it, oh are you going to do what her or she told you to do? And I said no. I said my role is to act for the owner's corporation. It doesn't matter who proposes the manager. If you have integrity and you're acting in the interest of all owners, then that's what you'll do.

Amanda Farmer: Mm-hmm (affirmative). That's an interesting point you make, Reena, and I think I'm inclined to agree with you. Why are compulsorily appointed strata managers registering by-laws. It's got to be a pretty unique situation where that kind of action is called. There is in New South Wales a court of appeal case, which I think is from way back now, 2009 or ... I'll look it up and I'll put a link to it in the show notes. But it's what we would call the Andrews case, and it goes directly to this point of what are the powers of a compulsory manager. Do they have the power to register by-laws and that case decided that yes they do, and made pretty clear that compulsorily appointed managers do have very broad powers, but they also have, of course, duty and obligation to be acting in good faith, to be acting in the interest of all the owners. Their usual obligations under the Property, Stock and Business Agents Act, as an agent.

But I wonder if, with such broad power and broad scope to do things which are going to impact ... Have a lasting impact on the building, do we need some kind of exception here?

Reena Van Aalst: Yes. I think, Amanda, that that's a very good point. I think there should be because ... And let's say a manager raises a high amount of levies and all that sort of thing, most things have a time span for which they will last, doing repairs and maintenance and things like that. And raising levies etcetera ... But when it comes to a by-law that's registered on the title of the scheme, that's a binding thing that will bind the scheme in perpetuity so it's not something that you can ... And I'm not sure how easy it would be. Obviously, you can, you said, Amanda, appeal a by-law, but I don't know what steps have to be taken to achieve that. What the likelihood is of the outcome. The cost of doing that as well. Obviously legal costs and other costs.

Amanda Farmer: Yes. That's right. That's an important point and one building I'm consulting with at the moment is seeking my advice on, should we overturn these things that have been done or attempt to overturn these things that have been done under a compulsory management. Something that they're considering very seriously and properly is the cost of having to do that. Of having to go to the tribunal, and what the likelihood of success will be. And we always say litigation's uncertain. There's no guaranteed wins. And they've just been through a very difficult time, of course. That's why they're under compulsory management and they're just coming out of that. Do they want to dive back into litigation and be embroiled in all that that brings again. And generally, they don't so it's fair enough to say well things can be fixed up later. That's not a very practical solution.

Hopefully, if we keep talking about these kinds of things, Reena, then the policymakers may start to get the message and we might see some change around the corner, which would be good. Alright, now. Win for the week.

Reena Van Aalst: Well, I took carriage of a scheme earlier this year, Amanda, that had an outstanding fire order since 2011.

Amanda Farmer: Mm-hmm (affirmative).

Reena Van Aalst: And the prior manager had done some work with the strata committee to achieve some of the outcomes that were required by council but most of the items were high cost. Therefore a special levy had to be raised, and obviously over the affliction of time those quotes have become redundant or need to be updated. So the chairperson actually went down to me with council because knowing that the fire order was obviously outstanding for some time that it would be good to meet with council and just to keep them abreast of what was happening. And council recommended a fire engineer which they contacted and we obviously started getting our proposal from that person. That company was quite good. They went down. They also met with council and they were able to achieve a reduction in some of the council's requirements, saving them a couple of hundred thousand dollars.

The area I think that we as managers face is trying to find good fire engineers that can actually negotiate with council and provide



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some fire-engineered solutions or other ways of achieving the same outcome that perhaps can actually save some significant costs. And in this case, because it's an older building and they need to have partition of fire prevention into the roof cavity from the top floor apartments, they're actually going to be using some sort of special paint. And it has like a wireless thing that's attached to it so ... Yes, I've never heard of this technology before. So I think there's different things out there that people can do to achieve fire separation between apartments or between the top floor apartments and the roof cavity.

I've got actually a number of buildings that have fire orders on them and nothing's been done for most of them. But I've just found a man that would ... These fire engineers out there. I think it's another sort of moneymaking industry for some of them that, you know, can't give you proper quotes, they just give you hourly rates. But this particular person has asked for the information, gone down there, had a look, gone down to council and ... It was all within a month of our initial contact. I just wanted to share that with the business. It's right to have someone you can work with that can really get things moving.

Amanda Farmer: And no doubt I'll be getting some emails from listeners who want to know who this person is. No need to tell us on the podcast but do reach out to me and I can put you in contact with Reena or that person, and even I'm thinking to myself right now I'd love to have someone like that on the podcast who we can have a good chat to about these requirements, and particularly how to deal with council fire orders. And it's true, it's who you know. It's who you know, particularly when it comes to council.

And also I'm not sure what council it was that you were dealing with, but some councils are more responsive than others, and we've had difficulties before with council orders which have just come from nowhere and we think they're actually wrong, we think if council did speak to someone with some expertise then they would accept that. But because of issues communicating with council and council being non-responsive and the timeframe for either having to respond to a notice of intention to give an order or to respond to an order, because the timeframe is getting so close, we either have to simply comply, or if the order hasn't yet been issued, we have to appeal. We have to appeal the intention to issue the order so that we can preserve the rights of the building.

Reena Van Aalst: Yes. That's right. As you were saying with some councils it's just ... Some are very difficult to deal with. And some are really good to deal with. Some will respond quickly. So yes, that's just one of the stories that I've had that I'm able to share for a fire order, which as we know can take a lot of time and expense, and to have someone that you can work with that can achieve that outcome and save us a good amount of money is a real bonus.

Amanda Farmer: Mm-hmm (affirmative). Yes. Thank you for sharing that one, Reena.

What I'd like to share this week is a topic that has been discussed inside the YSP members only forum. Now if you're not aware of this, you can become a member of Your Strata Property, and for \$29 a month, you can have access to a members' only forum where I jump in there and answer questions that are posted by members. You've also got free access to our templates, our eBooks, and I know the members in there are getting a lot of value from that.

They find that a question that they may otherwise be paying a lawyer 500, 1000 bucks, whatever it is per hour, to answer for them, I can answer for them within that forum and that's helpful to them as owners, as committee members. And there's certainly some strata managers in there too. So check out www.yourstrataproperty.com.au/membership.

Now this particular question that was asked by a member related to, and I think, Reena, we've talked about this one before, related to a notice ... What's now a Section 22 notice under the new act, a strata interest notice. So it's informing the strata manager that you now have an interest as an owner in a lot and this notice came from someone who said that they were the executor of a deceased estate.

Reena Van Aalst: Oh wow.

Amanda Farmer: They weren't actually the purchaser. They didn't suddenly become a new owner. But they have given the strata manager a Section 22 notice and they say their interest arises as executor under a deceased estate. And the member in the forum was asking me does that automatically entitle to vote. Does that give them the right to appoint a proxy to attend meetings? And



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advice that I gave ... I ended up going to quite some detail about how Section 22 works because it was actually more complex than meets the eye.

And the short summary of it is this, an executor of a deceased estate is, as matter of law, someone who is entitled to ownership of the diseased real estate. And that's under the Probate and Administration Act here in New South Wales. Now if you cross-refer then to the Strata Schemes Management Act, that provides that an owner is someone who is entitled to an estate in the lot. So that's how an executor falls within the definition of owner under the Strata Schemes Management Act. They're entitled to own the lot even if they're not actually, at that point in time, registered as the owner on the title.

So they, therefore, can give that Section 22 notice to the strata manager and say I'm a person who is entitled to own this lot. I am now notifying you of that fact. And as long as they provide on their Section 22 notice their name and their contact details and the other things that Section 22 requires, then they can have their name entered on the strata roll, and they then, by virtue of having their name on the strata roll, they have the right to vote. That's what gives them the right to vote.

So I was able to go through that in some detail there and assist that person who found that very helpful. But it was a very good summary for me in particular of how Section 22 works and when you are faced with those kinds of unique situations, which for a strata manager, you might be thinking I get these all the time, but oh hang on, this is a little bit different. This is the executor of a diseased estate. How does that then operate.

Reena Van Aalst: That's very interesting, Amanda, actually. Yes. It's funny, I've had people come into a meeting with powers of attorneys and that sort of thing in terms of voting but I haven't actually had that question that you've just raised ever come up. So that's very ... It's good to know that they can be entered on the strata roll.

Amanda Farmer: And the other thing that's important to be aware of with an executor of a deceased estate. Section 22 does require them to provide a statutory declaration to make clear that they are the executor because otherwise, you're not to know. You don't necessarily have the will. You don't have the grant of probate. So the section does say that if you are claiming right of ownership and the right to vote, by virtue of being an executor, then you need to provide a statutory declaration so always go back to Section 22, which will give you the details of what should be provided. Or join the membership and reach out to me in the forum and you'll get that information direct from me.

Reena Van Aalst: Right.

Amanda Farmer: So, that's it from me this week, Reena. Anything else from you?

Reena Van Aalst: No. All good, Amanda.

Amanda Farmer: I'm jealous of your trip. Enjoy.

Reena Van Aalst: Thank you.

Amanda Farmer: I'll catch you when you get back.

Reena Van Aalst: Okay. Bye Amanda.

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

