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YSP Podcast Transcript: Episode 098. Deadline approaches for window safety devices and a warning for managers

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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 Reena Van Aalst. Hi, Reena.

Reena Van Aalst: How are you, Amanda?

Amanda Farmer: I'm doing very well, thank you very much. I'm a little bit warm, I've been sweltering along with the rest of Sydney recently, might have something to do with the fact that I recently returned from a colder part of the world. I was in Texas for a little while if you can believe it. And it's been hot here.

Reena Van Aalst: It's actually been hot but then we had a few cool days actually where the days have been a bit warm but the nights and morning have been quite cool. So I think today is probably the first hot day we've had from the beginning. So yes, I love the hot weather, it's actually quite nice. It reminds you it's still summer.

Amanda Farmer: Yes, absolutely, and time passes so fast. We're already well into the year and how's business going? Busy, busy?

Reena Van Aalst: Yes, it's just been very busy, coming back and catching up on emails and invoices and all the pleasurable things that we have to deal with. But it's all been good actually, it hasn't been, yes, it's been manageable actually, which has been quite a nice way to start the year.

Amanda Farmer: Yes, I find there's a lot of things that you sort of, at the end of December, you're about to go on holidays, you shift it in the calendar over to January, you think, oh, I'll do that in the first couple of weeks of January, and then you have a look at your calendar and realise how many things you've promised to do in the first week of January and it all builds up, doesn't it?

Reena Van Aalst: Yes, plus whatever is coming since you made the plans to do it in January, so it all accumulates.

Amanda Farmer: Yes, absolutely. So let's get stuck into our challenges and our wins for this week as we like to do in these episodes. What's been your challenge for this week?

Reena Van Aalst: This is quite a strange one for me. I suppose now that I've got my own business, I'm sort of being more involved in the day to day stuff that I wasn't previously involved in, such as strata searches. I had someone that came and did a search and that search, Amanda, was done on behalf of the owner. So she wanted to sell her apartment and she decided that she would pay for a strata search and give that to any prospective purchaser, which I thought was a bit strange but anyway.

And during that time when the search was being done, you know, all the information was provided to her and to the strata searcher and then maybe a month passed by and I had a telephone call from a prospective purchaser and she was actually located overseas, so we sort of kept on missing each other with the time zone differences and eventually, she sent me an email, I responded when we actually spoke and she'd already exchanged contracts and was past that cooling off period, so, therefore, she was stuck with the contract.

But I think that was when she sort of realised there was going to be some special levies and there was a fire order on the building. So she sent me a copy of the search and said to me, and sort of tried to verbal me by saying that you said when you spoke to me that blah, blah, blah and the levies are going up and I said, no, no, I just said there is a fire order, and she asked me why the levies were high and I said, there was a fire order in the building, which was in the search anyway, it wasn't actually any surprise.

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And then also in the search, she noted that the admin fund was high and I just said, well, you know, the admin fund is what it is, and also in the minutes that the committee had held, had discussed and alluded to the fact that the levies had to go up because there'd been a deficit in the year before. And also that the corporation had to budget for some of the fire order, well, all fire order works even though the order had been outstanding for a number of years, nothing much had been done. The council had provided a 1-year extension to finalise everything, which meant that all the works that could have been staged had to have then been brought forward and completed in 12 months and also budgeted for 12 months.

So, I was just surprised, I mean, I think as agents, we get caught up in prospective purchasers, trying to get managers to actually give advice beyond what's actually in a search and then she asked me, well, what about after the 12 months, will the levies come down? I said, well, I can't really say, only an AGM can decide that levies will either stay the same, be reduced, or increased.

And then I had another searcher come the week after, and I normally have everything ready and I said, here, the by-laws have just been consolidated, here's the copy of the registered consolidated set of by-laws. And the purchaser says to me, I don't need the by-laws. Can you believe that? So, I'm sort of looking at this whole thing, Amanda, you and I have discussed people not having enough information about strata. People potentially paying over, in this case, these apartments are worth over a million dollars and I'm thinking, first of all, someone's buying an apartment over a million dollars in the lower North Shore, very prestigious area, and it was a recently renovated apartment as well, not doing their own strata search but relying on the vendor's strata search, which is the strangest thing I think I never come across.

That person then contacting me after they couldn't even get out of the contract, which wasn't, you know, and to me, they were using a conveyancer which always, I shouldn't say this but, I get concerned when people try and save money. Again, it's all about, they way I see it, it's a penny wise, pound foolish effort that was being undertaken so, yes, it was just a challenge, I just thought Amanda, I think a lot of agents always get pushed into trying to give more information about the scheme than what is actually, we can't really say what is beyond in the records but even then, if you say something, people can then verbal you. So I think, it's really important to say nothing.

Amanda Farmer: Yes, absolutely. I agree with that advice and it's advice that I have given managers before, if you have a potential purchaser contacting you, attempting to obtain some information about the building then the appropriate answer is always, you are welcome to book in and search the books and records, of course with the authority of the lot owner, you can engage a professional searcher for that purpose.

Reena Van Aalst: Or their agent can give the consent also.

Amanda Farmer: Or their selling agent is it?

Reena Van Aalst: Yes.

Amanda Farmer: And I assume the selling agent then has the authority of the owner to do that.

Reena Van Aalst: Yes.

Amanda Farmer: Other than that, you are really putting yourself in a tricky position giving out any information as you said, Reena, this lady has come back and verballed you and said, because of the fact of the telephone conversation, she is then attributing to you certain advice, which you haven't given or was a misrepresentation of what you did say, always best to just say nothing and encourage them to have a search.

Reena Van Aalst: In this case Amanda she said, I am an owner now, so you have to tell me.

Amanda Farmer: Oh, so this is, oh how funny, so she is contacting you then after the event.



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Reena Van Aalst: She has already exchanged, but she hasn't settled so she is not really an owner until she settles, but she is outside of that cooling off period so she really can't pull out.

Amanda Farmer: And she has relied on the search that was provided to her by the vendor. Now I have seen that before, vendors who will pay for their own report and then ask their agent to distribute that report to purchases. I have been in the position when I have been a purchaser, and I have been handed one of those reports and I have said, are you serious? You want me to rely on this? You are trying to sell me the property, I have a sneaking suspicion that this report may be a little bit biased and how am I to rely on this as being accurate? I am going to conduct my own search. That's a little bit of advice there for purchases who might be faced with one of those reports and you know, good on the vendor for trying it. The whole process of purchasing a property is of course, expensive in itself so they are trying to save their potential buyer some money but as a buyer, you need to be a little bit skeptical about that approach I think.

Reena Van Aalst: I think Amanda when you are spending that sort of money, like if you are spending, I think some people spend more money on some things that aren't of significant value when they are doing their research, when it comes to property, I am just totally baffled.

But she rang me when it was too late so I don't know what she wanted me to do.

Amanda Farmer: Yes well it's interesting that you raise this I am thinking I wonder if this was the same person but I was contacted, I think it was over the Christmas break, by somebody who said, I have purchased a strata property, I have bought in, I now know that there is a significant special levy coming up, was there any legal obligation on the vendor to disclose that in the contract? And I sent a quick email back and just said, I have got no information about exactly what this is, when you have found about it but in my view, there is no legal obligation on the vendor to disclose those kinds of things, it is buyer beware and it is up to you to conduct a proper strata search.

Reena Van Aalst: That's right.

Amanda Farmer: A thorough search of the books and records and you will see what work is upcoming and what levies are being raised for that purpose. So that's the general rule of thumb, but funny I got that question, yes only a few weeks ago.

Reena Van Aalst: The committee is not envisaging any special levy, they are just going to have one year's worth of higher levies for the capital fund to undertake those works. Some people's perception could be that it's deemed to be special levy even though it's not really, I suppose it's special circumstances really.

Amanda Farmer: Yes true, yes.

All right thank you so much for sharing that Reena, that's going to be really valuable for our manager listeners as well as our incoming or new strata owners.

So the challenge I want to talk about this week, not so much a specific challenge but I wanted to remind all of our listeners about the need to ensure they have window safety devices installed by the deadline, which is getting very close now.

The deadline to have these devices installed, many of you will know about it, is the 13th of March 2018. We are just a few weeks away from that at the time this episode goes to air.

There are quite technical requirements as to which windows in your building and if any windows in your building need these child safety devices installed, your strata manager will absolutely be on top of this and there is plenty of information around if you give it a quick Google or have a look at the Fair Trading website, what kind of safety devices should be installed, where, which buildings it applies to, but do make sure that your building is compliant and is taking those steps now if they haven't already.

I have had a couple of buildings that I have been working with who haven't been aware of this requirement so that makes me-

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Reena Van Aalst: Yes I actually had that, someone told me about that Amanda yesterday, the same thing. One of my colleagues, one of my old chair people and he said to me Reena, you know, we haven't even been told about it and I am thinking, really?

Amanda Farmer: Yes scary because there are fines if you don't comply and no building wants to have to deal with that headache, not to mention safety implications. Many buildings I know did this as soon as the requirement came out, even though there was this period for compliance, they really attended to it straight away, because they recognise the safety issue for children in apartment buildings and we want to make sure that children living in and visiting, sometimes we forget about visitors, grandchildren and family members, to make sure that they are safe in these high rises.

Reena Van Aalst: Yes definitely Amanda.

Amanda Farmer: Okay, so what's some good news for this week Reena, your win?

Reena Van Aalst: Well finally, as I had a bit of time over the break, we decided to actually complete our first newsletter, which is being launched in February, so it's going to be something quite different to your usual newsletters that strata managers distribute, which are usually like, I shouldn't say template documents, but anyway.

Amanda Farmer: We all know, yes, some lawyers too.

Reena Van Aalst: Yes exactly. I actually noticed a few lawyers now changing their logos and-

Amanda Farmer: Jazzing things up a bit?

Reena Van Aalst: Yes. And anyway, that's what I think I am looking forward to, just finishing it off and getting it out there in February, so-

Amanda Farmer: Excellent and will we see that as a monthly newsletter from Strata Central?

Reena Van Aalst: Yes, yes.

Amanda Farmer: Excellent. And is there a way for our listeners to make sure they get on your mailing list so that they get that newsletter when it's hot off the press?

Reena Van Aalst: Yes. So if you just go to our website, stratacentral.com.au and just go to the link where you can sign up for the newsletter, so then you can get a copy.

Amanda Farmer: Excellent. I am sure I am on that list, I think I was one of the first to jump on there, make sure I am at the top of that list.

Reena Van Aalst: Yes.

Amanda Farmer: I am looking forward to it. I know how creative your team is Reena and looking forward to seeing something different in the space.

Reena Van Aalst: Thank you, Amanda.

Amanda Farmer: All right well I want to quickly cover off a win that I had recently and Reena, you know about this one because you provided some assistance at the time and we have both been working with a lot owner who has been attempting to resolve some dysfunction let's say, within their building. They have had some trouble with their existing strata manager and Reena you have been doing some consulting from the strata management side.

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Reena Van Aalst: Yes.

Amanda Farmer: And I have been helping them with a tribunal application for the appointment of a compulsory managing agent. Now what came up at the AGM for this building recently, I attended as a proxy, there was a motion on the agenda for the reappointment of the incumbent strata managing agent and it was a motion that wasn't requisitioned by a lot owner, it wasn't requested by the strata committee, it was a motion that was put on the agenda by the strata manager, off their own bat. They just decided, hey my appointment is going to be expiring within the next few weeks, I need a new agreement in place, I am going to put forward this motion, which sees my reappointment under a new agency agreement and it just appeared on the agenda when it came out.

Now the lot owners met with both of us Reena and sought our advice on that and you said that this is something that you see happen quite a lot, strata managers putting forward their own motions for their own reappointment without any instructions from the committee or from a particular lot owner to actually put that motion on the agenda and you and I both agreed that that was illegal and the chairperson could rule that motion out of order.

And it was something that I had to put some thought into because I hadn't turned my mind to it before, what is it that entitles, if there is anything, that entitles a strata manager to put motions on an agenda?

Reena Van Aalst: I think the only thing would be Amanda, is if they had full, delegated authority, which we know in this particular case, there was partial delegated authority so it wasn't full, they didn't have all the functions. Which, if you were like, if you had full power, you could do that actually. And also, they didn't give the 3 months' notice before the expiry that their agreement was expiring either.

Amanda Farmer: Yes I don't know if it, was it one of those on roll over, it was an old agreement and under the new law it had been extended?

Reena Van Aalst: Yes you are right, yes and they pushed out the AGM, you're right actually.

Amanda Farmer: Yes so I think they complied in that respect but you are absolutely right, when we spoke about it, we looked at their agency agreement and we said, they don't have authority under their agreement to put the motion on, they don't have a requisition from a lot owner to put the motion on and our clients were members of the strata committee so we knew the strata committee had not instructed the manager to put that motion on.

So I attended the meeting and as you can imagine, quite controversially, the chairperson ruled the motion out of order, much to the strata managers surprise and I did expect, after that meeting that there might be some back and forth letter writing about how the owners' corporation or the strata manager would have gone off and got some advice to the contrary of what I had given, but if they did, we didn't hear from them. So I suspect whatever advice they did get, the lawyers agreed with the view that we had taken, that the chairperson was entitled to rule that motion out of order.

Reena Van Aalst: There was one other thing too, there was no copy of the agency agreement next to the agenda either.

Amanda Farmer: Yes, yes, you're right. No one had actually seen that agreement, it was proposed that it be tabled at the meeting.

Reena Van Aalst: Yes, that's correct and that's another thing that a lot of agents do, they just table their agreements at their meetings so I don't know how you can approve something that wasn't sent out with the agenda, how would people know what is actually being approved? Especially owners that aren't at the meeting who don't get a chance to, and perhaps if someone was their proxy or perhaps they would have attended had they seen the agreement, so it's really hard to know.

Amanda Farmer: Yes exactly. So for all those reasons, we decided our advice was pretty sound, that the chairperson could take that step. It hasn't been challenged, unfortunately, the building is still without a strata manager, it's been some months since that

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AGM and our clients are pursuing their application to the tribunal for the appointment of a manager. So, might keep you posted about that one but I just thought I would share that because it's a little bit unusual.

I had talked to some lawyer colleagues about it and they had sat back at the time and said, that's an interesting question. We get stuck in these habits I think in this sector, particularly strata managers and lawyers too, you get boxed into this thinking of oh well, it's always been done that way, so we won't question whether you can do that.

So strata managers, and I must say, there are statutory motions that must be on an agenda that are required by the legislation, well yes, of course, your strata managers are going to put those on the agenda as they should, but when we are talking about motions that are not statutory, you haven't been instructed, a lot owner hasn't requisitioned it, you don't have wide-ranging delegated authority, you really shouldn't be whacking your own motions on the agenda, very, very dangerous.

Reena Van Aalst: I think in this case too, they included a motion about minor renovation by-laws as well, which hadn't been, the committee hadn't seen either.

Amanda Farmer: Yes and I am sure there is plenty of managers out there who are doing that, thinking that they are-

Reena Van Aalst: Helping.

Amanda Farmer: Yes, that they are doing a favour, saying this will be great for you but if you don't get questioned at the meeting, well who asked you to prepare this? Have lawyers been paid to prepare this? We didn't ask you to do that. What does this by-law mean? Or if the by-law does get passed and it's for some reason not effective, you really don't want to be putting yourself out there to that extent if you don't have to.

Reena Van Aalst: Yes exactly right Amanda. As agents, I think we need to be cautious really and the best thing is always just to write to the committee and ask them, you know, here is a suggestion, here is something that you should think about and take their advice and instruction rather than putting it on your own self to put motions on.

Amanda Farmer: Yes, absolutely, good advice.

Reena Van Aalst: Yes.

Amanda Farmer: Well Reena, I think this is episode 98, and the next time I speak to you, we will be episode 100.

Reena Van Aalst: Wow!

Amanda Farmer: We have something special planned.

Reena Van Aalst: Can't wait.

Amanda Farmer: Tune in. All right I will catch you next time Reena.

Reena Van Aalst: Okay, bye.

Amanda Farmer: Bye.

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