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YSP Podcast Transcript: Episode 114. The importance of detailed meeting notices

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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'm doing very well. I am looking at you and your polka dots. Very nice.

Reena Van Aalst: Thank you. Actually, it's something that I inherited from my sister's friend who was going overseas, so she ... I've got so many clothes that people just give me. I'm so lucky, actually.

Amanda Farmer: Good on you. Well, you're one of those lucky women who I think anything looks fabulous on you, and-

Reena Van Aalst: Oh, thank you.

Amanda Farmer: No doubt your friends, colleagues, and family appreciate that, too, and say, *"Oh, this will look fabulous on Reena! Gee, I'll send it over to her."*

Reena Van Aalst: Thank you, Amanda. Yes. I'm lucky I don't have to spend too much on clothes these days.

Amanda Farmer: All right. Now, another busy week. Let's jump straight into it, Reena. What has been your challenge this week?

Reena Van Aalst: Well, I had actually an owner from a scheme that my friend lives in, actually, where she's bought a commercial property in Alexandria where the tenant that was vacating, because they're actually renovating the lot now to move into their office, but just about a few weeks ago, Amanda, the tenant was vacating. And they actually damaged the garage door. I think they must have put one of those things to stop the door moving on the sensor, and I think I don't know how it got knocked over, and obviously, then the door came down while the truck was still there and damaged the garage door. So there was a building manager involved, and he then contacted the property manager of the ... Obviously, it represents my friend as an owner and said to the property manager that you've got to now withhold the bond because of the tenant because we need to use that to recover the cost of the actual damage to the garage door.

Reena Van Aalst: And she rang me, obviously, in a bit of a panic thinking, *"Well, I mean, what's going to happen? How can I do this? The building manager's obviously saying this is what has to happen."* And I said to her, *"Well, that really can't happen because the owner's corporation has no direct relationship with the tenant and their bond. And also, this would be covered under insurance as an accidental damage part of the policy. So there'd be an excess to be paid. I'm not sure what that excess would be. It depends on, obviously, the scheme and what the excess is for that particular event."* But she actually thought that the building manager had the right to ask for this, Amanda. And she sort of rang up in a panic. And I'm just wondering if you know of any of your listeners or if you had the experience where if there's been damage to common property by a tenant and whether or not they've tried to ask for the bond to be retained to cover that damage?

Amanda Farmer: I haven't had that experience, so that sounds very unusual to me because you're exactly right, Reena. The owner's corporation has no right to claim on the bond that a tenant pays to a landlord under their residential lease. The relevant relationship in your example is, of course, between the building and the lot owner. And it's-

Reena Van Aalst: Yes.



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Amanda Farmer: A matter for the building to discuss with the lot owner. *"Well, this is the damage that has happened, apparently by the actions of your tenant. This is what needs to be done to fix it,"* And if the owner's corporation wants to pursue the lot owner for the costs of fixing that damage, then that's a matter for the owner's corporation to pursue through the lot owner. How the lot owner then pays for that, if, for example, it's \$500 worth of damage, the lot owner might, quite sensibly, say, *"Well, because the tenant caused it, I am, as the landlord, going to withhold \$500 from the bond."* The lot owner can do that, and that would be my suggestion to that lot owner. But otherwise, no, the owner's corporation can't force or require the lot owner to withhold the bond or direct the lot owner to do that. And as you say, Reena, the lot owner would quite sensibly say to the building, *"Well, have you worked out whether this is covered by insurance?"* Because if it is, then it would be sensible to make that claim, and if there's an excess, then I would cover that, assuming that that's less than the actual fix.

Reena Van Aalst: That's right. And also, I mean, some buildings, Amanda, what the insurer will then do is then pursue the insurer of the other vehicle or the other person, anyway, to try and recover that. So sometimes people are concerned that the premiums will go up if they keep lodging claims, but unfortunately, that's what insurance is for. And if you need to lodge a claim, if the cost exceeds the excess and the damage, then you've got to do it. So, yes.

Amanda Farmer: Yes. So not a very nice situation for that owner to be in, and a little bit scary that there might be building managers, I hope not strata managers, out there who are telling owners these things, yes. But good to clear that one up. Amanda Farmer: Okay. Now, the quick challenge that I'd like to raise this week, you may have heard it discussed on the podcast previously. I think Sean O'Dea might have raised it when we had our chat back in Episode 107. Even if owners have not received a levy notice, if the levies have been struck at a properly convened general meeting, then the levies are due and payable in accordance with the quarterly schedule that's been decided in that meeting. And this is a common misunderstanding on the part of owners. I see quite regularly, and I'm sure you do, Reena, as a strata manager, owners who say, *"Well, I never got notice or I never got an invoice. I never got anything in the mail. I never received notice that my levies were due so I didn't pay them."* The Act here in New South Wales now specifically states that even if the notice has not been received, the levies are due and payable.

So whilst that may not sound fair or reasonable to some lot owners, I think the expectation is that you should be attending your general meetings. You should be understanding that quarterly levies need to be paid. They need to be paid on time so that the building can pay its bills and properly budget for upcoming capital works. And that means your levies have to be paid on time.

Reena Van Aalst: It's funny, Amanda, you mention that, because a lot of people do think that unless they get a bill that there's an excuse not to have paid their levies. And I actually had this instance happen to me last week, just by coincidence. So this building has a June financial year end, so the first levy was due in July, then it was October, then January, and obviously now April. And the last time that this owner had paid was back in August for the July levy. But ever since, they've not paid any of the levies. We've sent out the third reminder notice, and that's when they rang up and said, *"Why have you charged me? I didn't get my levy notice."*

And this owner's been there for quite some time. I mean, obviously, I looked at the date of purchase, so it wasn't as if it was someone new that didn't know that you have to sort of pay levies, because some owners obviously coming from houses may not be familiar with the actual concept.

And the first question, I think, that comes to mind for me is, *"Well, who do you think ..."* Okay, one quarter might have gone past, maybe two is stretching it. But I mean, who do you think is paying for the building? And if you haven't got your levies, don't you think, *"Well, I should ring up and say, 'Do you have the right address?'"* Sometimes by email, it might go into people's junk boxes? Somebody spoke to her, we obviously I went back to the committee about it to get their instructions, and they said, *"No, the fees."* Because she was trying to get the fees waived. And the committee said, *"No, she obviously had a lot of time."*

But when you say about people attending meetings, Amanda, I mean, even if they don't attend, they still get the minutes for that meeting. And they should read it. And so in this case, I also sent her a copy of the minutes and said, *"Here are the minutes of your AGM. That was sent last year, so it was in that. And after a quarter or two, if you don't get your levy notice for some reason, it is your responsibility, as an owner, to contact your agent and say, 'I haven't received my levy notice. Do you have the correct address? Where was it sent?'"* Because I mean, whether it's email or mail, things get lost. I mean, we're not in a perfect world. And stuff happens at times. I mean, there's no one to blame. But I think people don't understand that the minute the AGM has struck

the levies, then the levies are struck and some levies actually send out monthly invoices. So it depends what the scheme does. But it doesn't have to be quarterly. It could be monthly.

Amanda Farmer: It's interesting.

Reena Van Aalst: There's no determination in the act to say it has to be quarterly so that's something that obviously has been adopted as practice, but... Yes, interesting, Amanda, that you say that. I think it happens quite a lot ... I mean, strata managers will definitely have a lot of this happening to them when it comes to people complaining that they never received their levy notice.

Amanda Farmer: Yes. And if you are a manager and you want the relevant legislation to cite, perhaps, to a recalcitrant owner who is denying their obligation to pay the levies by saying they didn't get their notice, then it's in Section 83 of the Strata Schemes Management Act in New South Wales, and it's Subsection 4. And just to be clear, and this is set out in Subsection 4, we're talking about the regular periodic contributions. So the legislation says that those regular periodic contributions are taken to have been duly levied even though notice levying the contributions was not given to the owner. So that doesn't include special levies. If there is a special levy, then that notice needs to be sent or an invoice needs to be sent out to ensure that that payment is made promptly. So that's Section 83, Subsection 4 for your regular periodic contributions.

Reena Van Aalst: That makes sense, Amanda, because obviously, an owner may not be aware there was a special levy. They may not have got the agenda. They may not have read the minutes. But you're right about the periodic ones. People should know if you lived in strata that you need to pay contributions.

Amanda Farmer: Okay. Your win for this week, Reena?

Reena Van Aalst: Well, my win actually, again, relates to a meeting that I was attending as a proxy bearer on behalf of an owner that I'm representing in a scheme. And this relates to Schedule 1 Clause 16 of the Act where it says, "*The chairperson may rule certain motions out of order. The chairperson at a meeting may rule a motion out of order if the chairperson considers that the motion, if carried, would conflict with the Act or the by-laws of the strata scheme, or would otherwise be unlawful or unenforceable, or, B, any requirements of this Act to include the form of motion the notice of the meeting has not been complied with.*"

Reena Van Aalst: So in this particular case, this relevant section was used by the chairperson at the instigation of our advisor and the lawyers that we had engaged to assist us.

And basically, there was about 6 different motions that were submitted on this AGM agenda to alter common property by special resolution. These included installing a lift outside the building. It's an older building, so installing a lift wasn't going to be a simple sort of exercise. There was no information about the cost. No location of the proposed, apart from just saying where it was generally. No quotes had been tabled or next to the agenda. There was another one where they were going to install a covering over an exit, and again, we don't know what the plans are, what it would look like, did it comply with fire regulations, because that stairwell's actually an exit, and would that be affected?

Reena Van Aalst: So on our advice, we said to the chairperson, "*Just rule the motions out of order.*" And one of the questions that arose, Amanda, was did someone have to get up as an owner and say, "Well, I don't agree with these motions for these reasons." And the advice that we got was no, that the chairperson doesn't have to give any reason. They can just rule the motion out of order, and just say, "*I'm ruling them out of order.*" It's obviously best to give reasons if you can, and I believe it's good practice and one should. But, so, therefore, it was about, yes, 4 or 5 motions that the chairperson said, "*I'm not going to put them to the meeting. There's been insufficient information given and I don't believe that owners can properly consider them, and therefore, I'm declaring them all out of order.*"

Reena Van Aalst: Which was a great outcome because the fact is that if they had been passed, it would have been detrimental because the owner's corporation didn't even have a budget for a new lift. So I don't know how it was going to undertake that event, even at the next budget when they were going to form that later on in the year-end when they hold their next AGM. You may have agreed to a lift back in May, but then when your AGM is going to be held in September, you may not have realised it was going to be a million dollars.

Amanda Farmer: Yes.

Reena Van Aalst: So I don't know how that would have worked, but again, it's best to rule the motions out of order or if you think that they're inadequate in some way, and I think in this case, there was hardly any information that would allow owners to make a well-informed decision, and I think someone said to me, uninformed consent is no consent. So I think that's a thing I like to now use in the future.

Amanda Farmer: Yes.

Reena Van Aalst: Uninformed consent is no consent.

Amanda Farmer: Yes, good outcome there for your client, Reena. And indeed, if insufficient information is provided with an agenda, and that's a good example where a building's proposing to do considerable works and is just seeking blanket approval for those works and not actually referring to a quote or a contract or an amount that the building is committing to, then the motion, in my view, is not capable of resolution. And if it was resolved, it could potentially place the owner's corporation in breach of the Act because perhaps this work hasn't been properly budgeted for. If it's a large scheme, you need to be careful of going over the budget. There may be a number of items where if the motion was resolved, it could place the owners corporation in a very difficult position.

Amanda Farmer: So I do agree with you. A good idea for chair people to give reasons if they are going to rule motions out of order. And we do have, as you pointed out there, Reena, in Schedule One, some of those stipulated reasons conflicting with the Act or the by-laws or otherwise being unlawful or unenforceable. But one power, if you like, of a chairperson that is often overlooked, I find. And it's something that we've talked about previously. I think it was back in Episode 98 where I reported a very similar win working with a building and a chairperson who was able to successfully act in the best interest of the owners by ruling a motion out of order and relying on that part of Schedule One to the Act.

Reena Van Aalst: So Amanda, just to add one more point to the subject, the owners actually wrote to the manager and said, "We don't believe these motions should be put, and we suggest that when the motions are being considered, that they be withdrawn by the secretary who had proposed them."

Amanda Farmer: Right.

Reena Van Aalst: And the manager wrote back and said, *"There's nothing in the Act that says that you have to attach plans or information to a motion."* And I'm thinking, *"I think people would understand that it's obviously common law provisions that apply and it's not what's in the Act."* To give you an example, and I think to give a lot of managers an example, is the agency agreement of a managing agent. So there's nothing in the Act to say that it has to be next to the agenda in the Strata Schemes Management Act, but obviously, the terms and conditions of your appointment need to be fully disclosed to all owners, not just at the meeting, where I think a lot of agents have been doing that. Just table their agreement at the meeting, Amanda, because they don't want ... Let's say a manager is being terminated and a new manager is taking over. What has happened with some managers that I'm aware of is that they actually don't provide their agreement. And they say, *"oh no, it will be tabled at the meeting, just here are the motions"*

Reena Van Aalst: And the thing is, I mean, I've seen that there have been agency agreements that have been overturned for that very reason, and I was involved in one many, many years ago. My first I think people need to understand in strata. So I think people need to understand that. It may not say you've got to attach all the plans and all the quotes, but I think it's inherent to understand that if you want people to pass a motion or consider a motion, you need to give them all the information. And if those people that weren't at the meeting, they should not be disadvantaged by the fact that quotes were tabled that the meeting.

Amanda Farmer: Absolutely.

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Reena Van Aalst: They should be able to know ... Yes. So I think that's really important, I think, for strata managers and owners to understand that you need to have all the information attached to your agenda so that you can consider it, and then you may give a proxy to say, *"Vote for or against."* Or you may think, *"No, I'm okay with any of these resolutions."* But if you're not at the meeting, there should be no reason that you aren't privy to all the information that is being discussed and considered.

Amanda Farmer: And particularly in the age of electronic voting, and if-

Reena Van Aalst: Yes, exactly.

Amanda Farmer: We're going to be seeing more meetings held that people are not sitting around a table in person. They are either voting before the meeting with pre-meeting electronic voting, or the meeting itself is being conducted electronically, it's going to be more important than ever to ensure that all those entitled to vote are furnished with the most detailed information available to help them make, as you say, an informed decision. And certainly, you will have clever lawyers challenging resolutions on the basis that the motion was not supported by proper information that allowed those either present or not present, voting by proxy, perhaps, to be able to make an informed decision. So I can't see how you can go wrong by providing more rather than less, really.

Reena Van Aalst: Exactly, Amanda. That's right. Exactly.

Amanda Farmer: All right. Well, the win I would like to share this week is my recent appearance on Sky News Real Estate. Now, many of you would have seen a clip of my interview with James and Sophie on Sky News Real Estate floating around our social media, but I do now have a copy of it, as requested by a few of you. You said to me, *"Amanda, where can we find this video? We've seen a short clip on your home page of the Your Strata Property Website. We want to see the whole thing."* It's a 10-minute interview. Strata basics, we talked about. Particularly, what are the hot topics in strata at the moment? What are people surprised about when they first buy into strata? And a little bit about what we're doing with Women in Strata, as well as Your Strata Property.

So I now have that video set up on the Your Strata Property website. You'll see a short clip on the homepage, and if you head over to our new section where you'll find a number of videos, not just the Sky News video. It's at www.yourstrataproperty.com.au/videos, and you'll see that Sky News video, and also some other short clips from our podcast interviews, which some of you have also been looking at on Facebook and on LinkedIn.

Reena Van Aalst: Yes, Amanda. You did a wonderful job. I watched that interview, and I was very proud of you, actually, seeing you on TV.

Amanda Farmer: Thank you very much. I have my little boy was watching, as well. It's live, of course, and it was on a Saturday afternoon, and I zipped down to Surry Hills where they record in the studio there and zipped back home. And he said, *"Mum, I just saw you on TV."*

Reena Van Aalst: Oh, that's so cute.

Amanda Farmer: It was very exciting for him, too. So we're hoping to share a little bit more through that medium about strata and make sure that we're reaching as many as we can to help inform and educate in this area that we know and love so well, Reena.

Reena Van Aalst: Yes. And it's basically a growing area, Amanda, obviously, as we all know, in the big cities. So I'm sure that they will ask you back many more times, I would say.

Amanda Farmer: Yes, yes. Watch this space.

Reena Van Aalst: Yes. Congratulations, again.

Amanda Farmer: Thank you. Thank you very much. And thank you, everyone, for your support. And those who've reached out to me to congratulate me and encourage me.



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Amanda Farmer: I think that's it for me this week. Reena, how about you?

Reena Van Aalst: Yes. That's it for me, too, Amanda.

Amanda Farmer: That's a wrap. That's our wrap, babe.

Reena Van Aalst: Bye.

Amanda Farmer: See you next time.

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?

