

**Publication Date: 9 October 2018**  
**YSP Podcast Transcript: Episode 133. When the former strata manager won't hand over records**

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**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 today?

**Amanda Farmer:** I am good. I felt like jazzing up your intro a little bit there. Da da da da daa!

**Reena Van Aalst:** Boring every time saying the same old thing, people must get sick of our voices saying "How are you today?"

**Amanda Farmer:** Reena Van Aalst, introducing you is never boring. Everybody knows the giggle is on the way.

**Reena Van Aalst:** Thank you, Amanda.

**Amanda Farmer:** How has your week been?

**Reena Van Aalst:** Well, I'm just back from holiday. I had a wonderful time and I'm just frantically trying to catch up with work and friends and family, so it's wonderful, actually. No, it's good to be back. I've been away for quite some time now and, yes, just getting on with life as usual.

**Amanda Farmer:** Yes, it doesn't take long, does it, to ...

**Reena Van Aalst:** No.

**Amanda Farmer:** You come back and it's a bit surreal and you've got a lot to catch up on, and then within a week or so, you need another holiday.

**Reena Van Aalst:** Exactly, need a holiday from the holiday.

**Amanda Farmer:** All right. Well, let's jump in. What's your challenge this week, Reena?

**Reena Van Aalst:** This is a very interesting one, Amanda. It's an owners corporation I took carriage of and it's been a few months now, and I still don't have all the records from the previous strata managing agent, so I've got a couple of boxes here and there, dribs and drabs and, the issue is that the strata committee won't instruct me to take any action against the former managing agent. And I'm wondering why because it's actually making the management quite difficult. We don't have all the records, even some of the financial information that I need in terms of the balance sheet and how things, general ledger for some of the balance sheet, and expenses I don't even have. And I believe the reason is that the strata committee, or some members of the strata committee, allowed the agent to continue managing the scheme after he'd been terminated.

So I looked at the Act of Managers to see what powers are in the Act in terms of how you can actually obtain those records, and Division 3 orders about strata are on record, Section 188 Order to supply information or documents, the tribunal may, on application by a person, order an owners corporation, strata managing agent officer, or former Strata managing agent of an owners corporation, to supply to the applicant information that the tribunal considers of the owners corporation, strata managing agent, officer or former strata managing agent, has wrongfully withheld from the applicant, and to which the applicant is entitled to under this Act.



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**Reena Van Aalst:** So, the question is Amanda, and this is part of my challenge and dilemma, I don't have any instructions to do this at the moment, but I have full authority in our agency agreement when it comes to maintaining the owners corporations records, so I don't know whether or not that gives me the authority to make an application against the former managing agent, which is in the best interests of the scheme. And I was just wondering, have you ever come across a situation like this, Amanda or any cases about agents not providing information?

**Amanda Farmer:** Well, looking at that Section 188, that is exactly the section that would allow you to make that application and obtain those documents from the former strata managing agent. The interesting fact of your circumstance, Reena is that you're proposing to do that yourself, as the current strata managing agent. And you are entitled, under Section 188, to make that application. The application can be made by a person, there's no restriction on who that person is, there's no requirement that it be the owners corporation or that it be the current strata managing agent, it can be anyone. Obviously, designed to cater to the fact that it could be a range of people who are needing the former strata managing agent to produce these records.

However, if you make this application, you would be making it in your own name. You would be making it either as Strata Central, your company, or Reena Van Aalst, you as a person. So you couldn't say that you're making it on behalf of the owners corporation, unless it's in the owners corporation's name. So I think that's the decision you have to make first. Who is the applicant in this application? If the applicant's the owners corporation then yes, look to your agency agreement and see if you have the power under your agency agreement to make this application.

**Reena Van Aalst:** Well, the issue is Amanda, when I look at the wording of the agency agreement, maintaining the records doesn't really I don't think give me the authority to make an application. Because normally, when you go to NCAT, you actually have to show that you've got authority from the owners corporation. I mean, I don't want to make the on behalf of their own company because its only in my capacity as the agent for the owners corporation do I need these records, so it's really their records that I'm seeking to obtain. So, I'm in this dilemma and I think what might happen is maybe things might change and when the time comes, people might see a reason in looking at what is the benefit to the owners corporation and what are the disadvantages of not having all the records.

**Amanda Farmer:** Just to your point about if the application was to be made in the owners corporations name, you're right, you're going to have a problem there because we go to the other section of the Act which requires owners corporations to approve legal proceedings via a general meeting, so you're not going to have that approval to commence the legal proceedings if you're going ahead and doing it without that authority. So the other option being to make the application in your own name and, as you say Reena, why would you do that if it is only for the benefit of the owners corporation and they don't want you to do it. I suppose that's the bottom line, isn't it? If they don't want you to do it ...

**Reena Van Aalst:** They haven't said no but they haven't ... In a sense, I keep writing to them about the fact that we need to deal with this issue, but they haven't said anything yet.

**Amanda Farmer:** And do you need these records to be able to properly ... Will you have to terminate your agency agreement if you can't get these records, for example?

**Reena Van Aalst:** Well, it hasn't come to that point yet but there was an issue just recently Amanda, there was a lot owner that was selling their lot, and I needed to issue a Section 184 certificate, and, because I didn't have all their records, and I think the office bearer were trying to get the information to me, and I received another minute book that had showed that there was a special levy that had been struck since the AGM, which I had no record of, so if I hadn't had that minute book given to me, then the figures would've been incorrect because the special levy that was due in 3 installments, 2 of which had already elapsed by the time this certificate had to be issued, would not have been included in the calculations, so, its pretty serious ramifications. And a lot of companies don't provide all the records.

Recently, I just had a strata search in my office who said to me that one particular company, that had been managing the scheme before we took carriage of it, said they only allowed them to see certain things and that's it. And I said but that's not legal and they

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go well that's all they'll give us. And I said well you need to go back to the owner, who the purchaser's buying from potentially and say well we've been denied all these records so we can't even do a proper report. But it's funny how the solicitors don't even realise that they can ask for more things if they need to have them. They're not just given what they're given ...

**Amanda Farmer:** Yes, that's the deeper issue isn't it and a recurring problem.

**Reena Van Aalst:** Yes.

**Amanda Farmer:** Well, I think you can probably put some pressure on this owners corporation by saying look if I don't have these records then I'm not going to be able to manage your scheme and I don't know if you're in breach of the act, I don't know if we're raising the right levies, I don't know if we're holding the right meetings, whatever it is, and they are all then exposed, particularly the office bearers on the committee, the committee members, so I really think they've got not choice but to make this application, I would be sending that message quite strongly to them.

**Reena Van Aalst:** Yes, definitely Amanda.

**Amanda Farmer:** Well, let us know how you go with that one.

**Reena Van Aalst:** I will.

**Amanda Farmer:** Always interesting Reena, these problems you have to face.

**Reena Van Aalst:** No dull moment. must say. I thought previously I had encountered just about everything that could go wrong and there's always something new that I've never experienced before, so it's ...

**Amanda Farmer:** Yes, that is strata.

Alright, well my challenge for this week, again, you kind of feel like you're in twilight zone when these things come up. This relates to financial documents, a building's financial statements for their financial year end. I was given a copy of these by a client of mine to have a look and to raise some questions about particular expenditure that had happened within the scheme that my client was not comfortable with. And in the course of looking at these documents, we discovered that a few invoices had been double paid.

So, what we did, we first looked at the financial statements so we saw the summary for the year on how much had been spent on plumbing, I'll use that example, and when we saw the very large amount that had been spent on plumbing, we wrote to the strata manager and said, can we see the cash payments record for the plumbing line items so we can see all the invoices. And when we went through and reviewed all the invoices we saw this double payment. And we also had a record that these statements had been audited.

So an auditor has one through, supposedly done this job of cross-referring the statements to the actual invoices, and has not picked up this double payment. And I have to say, I was quite shocked. And it was something I put on our list to chat about, Reena, to see if it is something that you'd come across, is this common, are auditors really that lax some of them?

**Reena Van Aalst:** It's a very interesting question Amanda because, when you think about the audit fees that are charged by the auditors that are commonly used by the strata schemes for their annual accounts, they're usually not that high. I mean, obviously, they're doing a cursory check of the accounts. But, one thing I must say I am surprised about your example, is that any large expenses, the auditor always asks for copies of invoices.

So what happens is that the auditor will go through all the accounts that you've given, then they go through the cash payments or pull the general ledger, then they will highlight invoices they want to see and normally they're the larger ones. Now, if a building is a large one and there's a lot of money coming in and out, they'll ask for example for copies to say Telstra they'll ask for a copy of the

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lease to see are we getting paid the right income. Sometimes, if they're more complex and then obviously you pay more money, but I think the problem is for the amount of money that's being charged its only a cursory check, but always the large invoices are always one of the samples of invoices that are requested by the auditors so I'm very surprised to hear that, in that plumbing example, that they didn't ask for it.

**Amanda Farmer:** Yes, and it's exactly ... The way I see is, we were doing the job that I imagine the job the auditor would've done, where we've gone through the annual statement and we've seen a very large amount spent on something that really shouldn't generally have an amount that large, and so we've looked behind it. As you say, the auditors should do, when they see those large amounts and ask for the invoices and that's what we did and we picked up this double payment. And I just couldn't wrap my head around how the auditor had not asked that question, or perhaps had looked at it and not picked it up.

**Reena Van Aalst:** Well let's go back one step. Why has the strata manager not checked the accounts? Normally, before the accounts got to audit, any prudent manager would go through all the accounts of the scheme, make sure that everything's been coded correctly to budget, because normally what happens is that you need to code to budget and if something's not unbudgeted it obviously will show in the expenses that aren't budgeted. So, I recall many times when I've seen a double payment, the first thing you do is deal with it as an agent, and get the money back or do whatever you've got to do before you actually send it off to audit.

And the other thing also is that most strata software Amanda, if the information's entered the same, this is where I think things go wrong, lets say an invoice starts with 5 zeros, then it's 2500, some people only enter the 2500 not the 5 zeros, so therefore if it's entered with the 5 zeros and 2500 and then entered just as the 2500, then sometimes the software won't pick it up, because it's a different invoice number, that's another issue. So I'm just surprised that the strata manager didn't pick this up.

**Amanda Farmer:** Oh yes, absolutely. I mean the invoice should never have been double paid in the first place of course but those checks and balances that are there to correct these things, to identify them, they've failed as well. And its fallen to my client to pay my fees to sort out this mess, which is disheartening.

**Reena Van Aalst:** Yes, the contractor should've also not ... If you get a big payment twice ... When there's big amounts outstanding, there's always pressure put on the agent by the contractor to pay this in a large amount, yet, when the shoe's on the there foot and they've been paid twice for a large amount .... It's very unsatisfactory and quite disheartening to think that people would profit by someone's mistake.

**Amanda Farmer:** Definitely. Well, if you want to find out more about strata audits, we did have Aylie Brutman on the show, Episode 87, and she's from Economos, and she conducts these audits. And Aylie gave us a real insight into just what auditors do and the level of detail that they do and sometimes don't go into. So I've, just with this discussion Reena, been reminded that we've got that Episode 87 and more information there from the ever helpful Aylie.

**Reena Van Aalst:** Yes, she's very thorough!

**Amanda Farmer:** All right. Let's shift gears over to your win this week Reena.

**Reena Van Aalst:** Well, this is another challenging case that's become a win because we were working with a developer who is quite inexperienced in strata, even though they've been in strata I think for sometime. They've actually probably had agents that don't really understand the Act quite well. But one of the things that they asked us to do was to call a general meeting to pass a by-law that would serve certain rights to a particular lot. And, unfortunately, they weren't happy with the fact that we told them that the Act prohibits that occurring in the initial period and unfortunately they actually I think had a settlement that was pending that passage of that by-law but unfortunately they had to concede that we were right and that it can't be done. So it was actually a good outcome even though quite a costly one for them I think.

**Amanda Farmer:** Right. Just for our listeners who may not be familiar with that concept of the initial period, what Reena's talking



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about there is the time from the registration of the strata plan, when a new building is developed, up until the time when more than 1/3 of the unit entitlement for the building is no longer in the hands of the developer. So until that time the building is in its initial period, we call it, and of course during that initial period the developer has a significant amount of control. They can pass special resolutions because they have that power on a unit entitlement basis, so our legislation protects owners during that period to make sure that developers can't do certain things including pass by-laws that give rights to particular lots in respect of the common property, so common property rights by-laws.

**Amanda Farmer:** And it sounds Reena, like this developer had made a promise to a purchaser perhaps, that they were going to get a particular part of the common property, often see it with parking and with storage spaces that the developer might want to attach to particular lots to increase their value and sell them off at a bit more of a profit, but you're right, not allowed to do that during the initial period and a good reminder for that developer.

**Reena Van Aalst:** Yes, and I think also in this current market Amanda, where it's not as buoyant as it has been previously, I think there's more pressure on developers to try and sweeten deals to try and get the sales through.

**Amanda Farmer:** Interesting, yes, good timing for that reminder indeed.

Okay, well my win for this week relates to a notice of general meeting, And it wasn't an annual general meeting, that's why I've just called it a general meeting ... Just on that topic Reena, I know I'm going a little bit off course here but, worth noting ...

**Reena Van Aalst:** Yes, it's not called AGM anymore.

**Amanda Farmer:** It's not called AGM anymore, that's it, yes. And I think you pointed that out to me recently in our old 1996 Act in New South Wales we used to have this reference to extraordinary general meetings, AGMs, if it's not an AGM it's an EGM. In our new 2015 Act, we now just call them general meetings, there is no reference to extraordinary.

**Reena Van Aalst:** Exactly!

**Amanda Farmer:** But plenty of us are still using that terminology, lawyers and strata managers and owners alike.

**Reena Van Aalst:** Yes, I've seen many agendas and minutes that are issued with that terminology Amanda since the Act came into effect but, yes, I suppose they haven't read that section yet!

**Amanda Farmer:** Yes. So, anyway, back to my notice of general meeting, I was sent this by a client who wanted me to attend this general meeting. They were quite concerned about the motions that were on the agenda relating to an overhaul to the by-laws. And they said Amanda can you go to the meeting for us and vote against the motions and try to advocate for our interests? And I said no problem.

I had a close look at the notice and I immediately got back to my client and I said this notice is not valid. It does not meet the requirements that are set out in Schedule One to the Strata Schemes Management Act, notices of general meeting must contain certain things. And, for example, this particular notice did not include a form of motion to confirm the minutes of the last general meeting. It did not include a statement that a vote by an owner does not count if there is a priority vote cast for the lot in relation to the same matter. It did not include the provisions of the Act for determining a quorum at meetings. So I'm just looking at the list of things in Clause 8 to Schedule 1 of the Act and it did not contain most of those things, it simply had a motion in relation to amending the by-laws and had the date of the notice and attached is a proxy form if you want to send a proxy, that was about it. And it was issued by a strata managing agent.

**Reena Van Aalst:** Oh dear.

**Amanda Farmer:** So, the win in all this is that I wrote to the owners corporation, care of the strata managing agent, and I said

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your notice is invalid. If you continue to convene the meeting, the validity of the meeting will be challenged on that basis, and if you resolve any motions at this meeting, they too will be challenged on the basis that your notice is invalid. I recommended, and this would be an interesting topic to discuss with you Reena, that the strata committee cancel the meeting on the basis that the notice was invalid, so it could never actually be validly held. And, I raised that tentatively because there's no real way to stop a meeting, you actually have to have the meeting and you can adjourn it and I think you and I might have discussed this before, whether on the podcast or not Reena, but I took the view that because the notice itself was invalid, then the committee could actually cancel the meeting and just explain to owners that it was being canceled because of that defect.

**Reena Van Aalst:** Yes, so we've had to cancel meetings, not for validity but for other reasons, but we always get the strata committee to pass a resolution to that effect because they're the only entity that can actually cancel a meeting. An agent doesn't have that authority either. But, can I take you one step back Amanda, so, in terms of this agenda, how was that general meeting called? Was it called but the secretary or was it called but the strata committee or was it just called by the agent? Because you'd have to look at the powers of how that general meeting was convened in the first place.

**Amanda Farmer:** Yes, indeed. We don't know, at this stage, and my client is not a member of the Strata committee, we assume that there was a direction from the Strata committee to the strata manager to issue that notice, but we haven't seen minutes of any meetings or any correspondence in relation to that, so we don't know. But very good point to investigate.

**Reena Van Aalst:** So I suppose, Amanda, that they're just going to redo the meeting and do it correctly this time?

**Amanda Farmer:** I suspect so and I have to say, ever loyally, I was very careful in my letter, that I did not tell them how to do it properly! I said it doesn't comply, you work it out!

All right. Another jam-packed episode, as always, some great stuff there. Remember you can get the transcript of our episodes over at [www.yourstrataproperty.com.au/podcasts](http://www.yourstrataproperty.com.au/podcasts). You'll see all of the episodes there and if you click into an episode of your choice, there is a link to download the transcript if you want to have a look at what we've talked at a little more closely, share it with your strata manager, with your fellow owners and committee members, lots of juicy information. Anything to add, Reena?

**Reena Van Aalst:** Nothing to add today Amanda, all good!

**Amanda Farmer:** That is the end, enjoy your day! Catch you next time.

**Reena Van Aalst:** See you later Amanda! Bye!

**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 via the show notes at [www.yourstrataproperty.com.au](http://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?