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YSP Podcast Transcript: Episode 142. Your access to my latest live QandA

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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 this is Your Strata Property. Hi everyone, you have me this week. I am bringing you a very special recording which comes from a live event which I spoke at very recently. I was invited by Veronica Morgan of Good Deeds Property Buyers to speak on all things strata at her event held for her special clients.

Veronica's name is probably familiar to many of you long-time listeners. She's becoming a bit of a regular guest on the podcast. Episode 55 Veronica joined us to talk about why strata purchasers should work with a buyer's agent.

She came back for episode 115. That was an episode with Reena as well where the three of us spoke about the rookie strata errors that some purchasers can make when they are new to strata and the things to look out for when you're buying your first strata apartment. More recently, episodes 132 and 135 I brought you Reena's interview and then my interview on Veronica's own podcast.

Her property podcast is called The Elephant in the Room, and those 2 episodes gave you a little bit of insight perhaps into the more personal side for Reena and I when it comes to living in and working with strata schemes. I do recommend those episodes for anyone who's looking for something a little bit different, perhaps.

Veronica's podcast talks about the parts of the property sector and the property buying and selling world that others don't talk about, so they call out the elephant in the room. Check out that property podcast if you're looking for another one to add to your list. Now, as you would have heard me explain on those earlier episodes, Veronica is the co-host of Foxtel's Location, Location, Location Australia.

She is also a real estate agent, a buyer's agent, and as I said her company is called Good Deeds. Now, having been invited to speak to her very good clients at this special evening all about strata, her team was kind enough to let me record that evening. I am now bringing part of that evening to you, in particular, the hot questions and answers that were asked on the night.

I've picked out some of the questions that I think you will particularly enjoy and get a bit out of. I'm going to splice in my questions to make sure that those are clear, because otherwise, they're not very clear from the audio that we've got from the floor, and then cut across to the answers. I've picked out nine questions in particular that were asked and answered on the evening.

The first question related to an owners corporation's duty to repair and maintain common property. This guest asked what if the building is trying to repair and maintain, but for whatever reason they're just not getting the job done. Here's my answer to that one.

The duty is what we say as lawyers "*strict*." It's a strict duty, so there's no excuse. It's like when you're speeding and you say, we, again, as lawyers say you have strict liability for traffic offenses. It means it doesn't matter if you didn't mean to. It doesn't matter if you were going to the hospital because your wife is in labour. It doesn't matter that you had a really bad day. It is a strict liability offense.

Similarly, the owners corporation has a strict duty to repair and maintain the common property. Doesn't matter that they don't have enough money. It doesn't matter that they couldn't get access to the property. They should have gone to the Tribunal and sought an order for access. You can force a lot owner to give access.

The [Section 106](#), the only thing it does say which might get you out of hot water is that you're relying on somebody else, so you're waiting perhaps for a ... It goes to developers and building defects. If you can't deal with the issue because you're in the middle of a building defects claim, and to go in and fix it would be to destroy your evidence in the building defects claim, then that's one of

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only excuses for failing to fulfil that duty.

They generally won't order you how to get the money. They will just say do the work, and they will put a time frame on it. Matter for you to comply with that order.

The next question that was asked was by a person who is in the market to buy a strata property, and this person asked me what would I recommend they do when they're investigating potential strata properties to buy, what inquiries do I recommend they should make. Here's my answer.

A really good question and it's something that we talk about a lot on the podcast I'm pretty sure both of our episodes with Veronica. We had her twice now. We had spoken about exactly that issue particularly in her capacity as a buyer's agent. So if you jumped on the website and find Veronica's smiling face there in the list of podcasts that's a good place to start. You need to be inspecting the books and records of the owners corporation. If the building is managed by a strata manager, the records will be held at that person's office. and if you're looking at your contract for sale it will have their details on the bottom of the front page. So you ring them up, you say, *"I'm interested in purchasing this property. I like to make an appointment for an inspection."*

You can get professional strata searchers to do the job for you. So these are the people who that's all they do. They go in and check records, they've got a template checklist generally, that they go through and say, *"Yes, there's a certificate of title, there's the insurance, there's the minutes of the last meeting."* They will copy a few things for you. They might give you a general comment as to there's no Tribunal proceedings, everybody seems like each other, they comply with the legal requirements. It can be helpful. It's often a good start. I have seen more and more vendors. So people who are selling are getting these reports done themselves, paying for them then giving them to purchasers. I find that kind of crazy that a purchaser will then rely on something the vendor trying to sell them the property tells them about the property.

If you can, I recommend you go in and look at the records yourself and I appreciate not everybody has the knowledge and the experience that I have in knowing what you are looking for. But part of it is common sense. You've got emails thereof strata committee members talking to each other about a problem. You're looking for any reference to your Number Lot 15 that you're interested in buying, is there any plumbing issues, is there a wide scale balcony refurbishment project about to happen. It's going to cost 4 million dollars and everything has to pay \$30,000 special levy. That will be in the minutes of meetings.

On one view, it's not technical stuff you've got the time go in have a look at it. Your really best bet is to engage a strata lawyer, not a conveyancer, not a property lawyer, a strata lawyer to go in and do that job for you. Because we will understand what we are looking for and be able to pull out things that yourself, strata searches, conveyancers, may not be attuned to. It's definitely the first step in buying a strata property.

When buildings change strata managers, there is a requirement in the legislation that all records be transferred so they should be following, the records should be following the building, and there shouldn't be records left with a former managing agent. The reality is you either go to do your inspection and the old stuff just isn't there, they don't have it, or they only pull out the last 12 months.

I do this all the time. It's something that often when I have lot owner clients come to me with a problem, I say, *"Step 1: we're doing a strata search, because it will tell you more than what is being discussed at meetings and you'll get a few insights."* I go and I'm given the last 12 months. The legislation says that you must have 7 years. The list is very long as to what you must have. There's a podcast episode on this.

They almost never provide it all or they don't provide emails, because they say, "Well, that's electronic." Well, you're entitled to look at electronic documents. My suggestion is go in understanding that there could be stuff that's missing. Something I think I mentioned when we were chatting to Veronica on the podcast was when you're at the open for inspections ask if you see other residents, and we all know, everybody goes and sticky beaks.

I go sticky beak at my guy upstairs when he's selling, and you can pick out who they are, *"Oh no. I'm just sticky beaking. I'm from*

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number 37." Go and talk to that lady from number 37, and say, "Hi, I'm really interested in buying this. Is there anything I should know?"

"It's a lovely place. I've been here for 30 years. We don't bill managers everything. We don't have a problem. We did have that issue where the carpet was sodden one morning. I think that was 2 weeks ago. Anyway, I'm sure that's fine." You'll get insights in that other creative way. If you're aware that there's stuff missing, try and think, *"I'm about to drop a lot of money on this. Where else can I get this information?"*

This next question, a good one, how to deal with a difficult serial complainer in strata. Here's what I had to say.

A couple of months ago I had a webinar which was titled How to Combat Bad Behaviour in Apartment Buildings. The webinar was all about, believe it or not, by-laws, how to use by-laws to combat bad behaviour.

Quite a popular topic of discussion within that was the power of a communications by-law. I don't know if you have this in the strata committees that you're on in the schemes, but there is a by-law that says something along the lines of everybody must communicate courteously, politely, and within a set of guidelines that are set by the strata committee, so we will not respond immediately to correspondence.

We will table it at our meetings. If your communication is not courteous or not polite, it will not be responded to. You could even limit people to one email per week if you felt the need to do that. There's a Queensland case to this effect where this was used really successfully. It's called Tank Tower case if you want to look it up.

The tribunal can say, *"Ma'am, pull your head in. This is not an appropriate way to communicate with the strata committee."* In the Queensland Tank Tower case, they actually limited the person to only communicating by post, only sending no more than 1 page, and only communicating once per week or something like that, which was quite powerful for this person who was vexatious and difficult.

Think about other by-laws. There's quite a helpful model by-law. When I say model by-law, it's the by-laws that are in the legislation and most buildings have these. I think it's By-law 6, and it's about behaviour on common property. Behaving in a manner that causes offence or embarrassment to any other owner, resident or person lawfully using the common property. I quote that by-law all the time in by-law breach notices.

Sending her a notice to comply. You're probably across what that means. A notice to comply with a by-law. They don't comply, straight to the tribunal for a penalty of up to \$1,000, which is payable to the owners corporation. Characters like that who are consistently difficult, yes, you might need to go down that tribunal path.

This next question was about maintaining the strata roll, and in particular the strata manager for this person's building was not keeping the strata roll up to date and was also saying that this owner was not permitted a copy of the strata roll and could not communicate with other owners. We've heard that one before, haven't we? Here's what I had to say.

In case you're not across the terminology, the strata roll is the document that records all the owners' names, their contact details, their address for service, their email addresses, if they've got a tenant in, the contact details for the tenant, the real estate agent if they're using one, the mortgage if they've got a mortgage, so who the mortgagee is.

It's a document that you must keep under the legislation. It must be kept up to date. Whenever a property sells, then the lawyers or the conveyancers doing the sale must notify the strata manager. Whenever there's a new tenant, must notify the strata manager so the strata roll can be updated. What we're hearing here is the strata roll is not being kept updated.

It is a function of the secretary to do that. If you're the secretary on your committee, then you're thinking, *"Well, I'm in breach of my functions here."* Number 1, it sounds like you've delegated that to the strata manager, so you're not going to be at fault here, because you've delegated that task to the strata manager and they're not doing it, so don't worry too much about that.

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Amanda Farmer: I hear again and again that the information in the strata roll is private and nobody can access that information. If you do a strata search, you're not allowed to look at the strata roll. You're not allowed to get everybody's email addresses if you want to campaign, perhaps, to be elected or to change management.

That is crap. That's my polite word that I just had to think about. That is absolute crap, technical legal term. We have a tribunal case that says that, that it's crap. There is no privacy law that's relevant. There is nothing to stop you knocking on Fred next door's door and say, "Hi, Fred. Do you mind if I get your email address?" Not a problem. Absolutely not.

I hear it again and again from strata managers. I have an episode on this, and I want to say the case is Legge, L-E-G-G-E, and I quote that case consistently that that is the case that says no privacy in a strata roll. Of course, it must be kept up to date. It might even be a penalty provision in the act.

If you look up, if you're used to looking up the legislation, the section that says you must keep the strata roll, it'll say in fine print a civil penalty applies. If it's not done, there's actually a fine that's payable by the strata manager. I would be quoting that to them, and saying, "You want me to make an application for a fine, or are you going to keep the strata roll up to date?"
Speaker 3: Who's got the right to see the strata roll?

Owners or their authorised representatives. In the case of when you're selling, what you do, what the owner generally does issue an authority and direction to anyone who is a prospective purchaser of my lot. They may come and inspect the role, or their representative or their lawyers, or their strata searcher. As long as the owner has allowed it, then anyone can.

This next question, what's happening in relation to pets in New South Wales. Here's my answer. We have had 2 cases, one the Yardy case, Y-A-R-D-Y. That came out in February of this year but was only reported at the end of August for some strange reason. We couldn't read it until the end of August, but we knew it was out there somewhere.

That is the first case that said a by-law banning pets is harsh, unconscionable, and oppressive, and therefore invalid. Cannot have a by-law banning pets. This concept of harsh, unconscionable or oppressive is new. It came in with our new legislation. Previously you could have by-laws doing whatever you want really.

Cathy Sherry who's an academic in this area, she's written a very clever book and she's from the University of New South Wales, she has a quip where she says, "Prior to this harsh, unconscionable or oppressive you could have a by-law banning you from eating meat in your lot," because by-laws only had to relate to lots and common property. That was it.

There were a few exceptions. Can't ban children, can't restrict leasing, can't ban assistance animals, but otherwise, you can pretty much do whatever you want with by-laws until now. We have to be very careful. I'm telling my buildings, "Go through your by-laws. Make sure there's nothing cuckoo crazy town in there." I think a by-law banning pets is going too far.

You can have a by-law that instead has an application process where each case is considered on its merits, and they're the kind of by-laws I draft. We've had the Yardy case say that by-laws banning pets no good, and we had an unreported case, but I had a contact who sent it to me, the McCormack case which was only beginning of October.

It was a case where they had a by-law that permitted pets with approval, but the approval was withheld, and this owner said that's unreasonable. I should be allowed to keep my pet. The Tribunal said, "Yes. You're right. You can keep your pet. Also, even if this by-law banned pets, I would have allowed you to keep your pet because a by-law banning pets is harsh, unconscionable or oppressive."

I just had someone call me today actually wanting to overturn their pet ban as well, so I think we're going to see a lot more of these. If you want a pet in your building, now's the time. At our last general meeting, I had our by-laws changed and we're getting a dog next year. Very exciting.

Next up, of course, we couldn't get away without a short-term letting question. Where do by-laws governing short-term letting



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currently stand? Can a building ban what we call short-term letting or Airbnb? It's been a really hot topic in New South Wales for the last 12 months. Nobody's been really sure. We've had some weird cases come out of the tribunal that says, "No. You can't ban Airbnb."

Amanda Farmer: Lawyers who understand strata law have looked at that and said, "No. We don't agree." We've had a privy council decision from London, and we very rarely get those anymore, for a strata building in the Caribbean which has identical legislation to New South Wales in this Caribbean island. Their by-law was upheld that was banning Airbnb, so that was over Christmas last year, so we all got really excited saying, "Yes, we can ban Airbnb."

The Tribunal a few months before had said, "No we can't." The government has now stepped in and we have legislation which has been passed but has not commenced. This legislation says that if you are an investor-owner, you don't live there, this is not your principal place of residence, the owners corporation can with a by-law ban you from short-term letting.

Real questions around that. How do you prove the principal place of residence? We've got clever owners. That means they can live overseas for 6 months, rent it out for 6 months. The other part of the legislation says if you are a resident owner if you want to rent a room and you're there, do that as much as you like, no probs.

If you want to go to France for four weeks and Airbnb for that four weeks, no probs. Resident owners have a maximum 180 nights a year to short-term let. That's given us a bit of certainty around this which is great. The reason the legislation hasn't started, and we don't think we'll see it start till this time next year probably, is because part of the legislation introduces a code of conduct for people who are letting their apartments out for short-term rental.

The code of conduct goes to things like excessive noise and parties and damage to common property, and there is a 2 strikes and you're out system. If you breach that code of conduct twice, then I'm not sure what it is because I haven't seen it yet. It hasn't been drafted, then you can be banned from short-term letting for 12 months or 2 years, something like that.

All that helpful, useful stuff is still being worked out. We're kind of in the position where I think we were at the beginning of the year, which is I think you can have by-laws that ban short-term letting provided it doesn't go goes your planning instrument, so your council development consent. Some councils will say, "This building is approved for service departments, so you can't ban them because the council development consent is going to override your by-laws."

Always look at that. If you want to deal with short-term letting, always look at your planning instrument first, and then go and see a strata lawyer about drafting a proper by-law. Buildings who come to me now, I'm saying, "Well, let's wait and see what this new legislation, particularly the code of conduct is going to say because we might have to just change your by-law again next year."

If you're really desperate, generally, yes, I'm confident in saying that most buildings subject to planning controls can ban short-term lets. When I say short-term, it's less than 90 days.

Next question, a nice technical one, what happens when there are short-term residents and the strata roll needs to be updated? How is that handled? Here's my answer. There is no exemption from having to notify under the act if there's a new tenant. Technically, an owner who is short-term letting should be notifying the strata manager every time there's a new tenant in there.

It's called a tenancy notice. It's section 258 of the Strata Schemes Management Act. Again, it's a penalty provision. I think the penalty is, so I looked at this 2 days ago, the penalty's payable by the landlord. If they don't notify, then they're subject to a penalty. It's 500 bucks, and obviously, it has to be pursued through the tribunal. Sometimes just quoting that to somebody is enough.

Next up, a question on everybody's minds, how do we deal with owner apathy?

It's interesting to hear, you think your strata manager's pretty good because you can get a hold of them. That's where our standard is at.



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Amanda Farmer: That was my first thought, if personally, you're finding the burden a bit too much, and I know until I got to my new building where I am now the committee there was finding the burden a bit too much until I pointed out to them that the strata manager was not doing his job, and so we needed to appoint Reena, which is what we're doing in 2 weeks' time.

Think about is there something the strata manager could be or should be doing to lighten the load for me. If it's stuff on site, you might not be big enough, but may be worth getting a quote for a part-time building manager who maybe comes by twice a week. Then you know, *"Okay, there's a problem with the garage door. Todd's here every Thursday at 9:00. That's his job to deal with,"* because I don't want to deal with garage doors either, so we've got a building manager.

It's difficult when there's majority investor owners. Maybe propose raising a really big special levy, and then they all come to the meeting.

Money talks. Money talks.

Finally, this was a question from the floor from Veronica herself. What if you're buying a property that has a beautiful garden terrace, and you're concerned about whether you own that garden terrace, and whether there might be some privacy issues in terms of people overlooking your terrace. What should we do about that? Here was my answer.

In that kind of a set up, and it could be a courtyard, it could be a deck, it could be a garden, it's really important to look at the strata plan, so start with the plan. This is where you need somebody who understands how to read these plans, but also it's not too hard if you're standing there at the property yourself and you turn it upside down like I do, which way is north?

To see where the boundary is between the lot and the common property, and that's marked by a thick black line on our plan. What Veronica said is this is very clearly common property, but we're being told that we can use it because the current owners use it. You need to check the by-laws and see if there is what we now call a common property rights by-law, which gives you the right to use that area to the exclusion of everybody else.

If you have that right, then it is just for you, and they cannot change that by-law without your consent. In limited circumstances, the tribunal can make an order revoking that right, so that's something to be aware of. Generally, if that by-law is there, then you've got the right to use that space.

Also, look closely at the by-law, if it exists, what else does it allow you to do or prevent you from doing in that space? Can you plant trees? Can you put up fences? Can you put up lattice? Can you build a shed? Does it say anything about that? If it says nothing then a lawyer will tell you, *"Go for it. Do what you like."*

If it says only for the maintenance and upkeep of the garden. Any other structure must seek approval, something like that. Important to look at the fine print, especially if you're concerned about privacy and you've got a real estate agent, for example, saying, *"Well, you can just put a tree there. You could just put a pergola out there."* The amount of fights I've had about pergolas.

Make sure you check whether or not you are entitled to do that. Again, it's probably going to be a strata lawyer who understands the ins and outs of these by-laws who's the best person to tell you that.

That's it for this week. Thanks for tuning in. I hope you enjoyed the episode. Don't forget to reach out to me, amanda@yourstrataproperty.com.au. If you particularly like something, if you have a question that perhaps Reena and I can answer in our wins and challenges episodes, we always like to hear from our listeners. If there is a particular topic that you might like me to cover in a solo episode, I do like to throw in some solos every now and then, and I'd love to hear from you. Catch 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?

