

Publication Date: 21 May 2019

YSP Podcast Transcript: Episode 163. Can't get access to install window locks?

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Amanda Farmer: Hello and welcome. I'm Amanda Farmer and I have with me today Reena Van Aalst from Strata Central. Hi, Reena.

Reena Van Aalst: Hi, Amanda. How are you?

Amanda Farmer: I'm doing well, thank you very much. Another busy, busy week in strata for me. How about you?

Reena Van Aalst: Yes, always busy in strata. Always something new, I think, just about every week.

Amanda Farmer: Yes, yes. And I know that you work so hard that you have been recovering from a bit of an illness, a bit of a cold, that's going around. How are you feeling now?

Reena Van Aalst: Yes, I'm getting there, actually. Just it has taken a while, I think, because I was a bit run down. But now I'm on the mend so it's really much better, thank you.

Amanda Farmer: Excellent to hear. All right, let's jump straight into your challenge for this week, Reena.

Reena Van Aalst: Well, I'm sure, Amanda, some managers out there may have a few buildings that still don't have all their window locks installed, which the deadline was 13th of March, 2018. And many schemes that we took carriage of in that period still hadn't even started the process. So many schemes are still obviously completing that process, even though quotes had been obtained and you had to get access into every apartment.

But as I'm sure you're aware, Amanda, being a lawyer in this field, that sometimes owners or residents don't give access. And I just wanted to check in terms of the liability on the owners corporation for such types of schemes where there is still outstanding locks that have to be installed. We have a few buildings where we've had access refused and in some cases the committee has said, *"Well, we've done all we can. We've had the company out for 3 occasions now trying to get access. The owners corporation has been charged re-attendance fees."*

And so now what is the next step? My advice has been that under Section 118, the owners corporation must ensure that window locks are installed. And then Section 124 states that if you can't get access for any of the conditions named in 118, then an order can be obtained for access. And as we know, that's costly, that takes time. So what's your advice on that?

Amanda Farmer: Yes. Well, if anybody is not across this requirement in New South Wales to ensure that there are complying window safety devices on windows in a strata building, you definitely need to go and check out Section 118 of our Strata Schemes Management Act 2015. I will put a link to that in the show notes for this episode.

And have a read of that, together with Regulation 30 in the Strata Schemes Management Regulation. Regulation 30 is what sets out the types of windows that must have compliant safety devices installed on them. It depends on the position of the window, the height from the ground outside and what kind of building. And, yes, Reena, as you said, the deadline for compliance with this part of our legislation was indeed March 2018. So some time ago, and I too am seeing buildings that have not yet had the locks installed at every lot or every lot where they need to be installed.

And, look, I agree with you. Section 118 is quite clear that the owners corporation must ensure that there are complying window safety devices on all windows. And if you don't get access then you have the right under Section 124 to apply to the Tribunal for an order. And section 124 actually specifically refers to access required for the purposes of Section 118. So it anticipates, if you like,



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that you may not have been able to get in to install these devices and you therefore can apply to the Tribunal for an order that the lot owner must permit you access for the purpose of doing that work.

And I think if you didn't take that step and disaster, some catastrophe, struck, I think you'd be in a difficult situation because you have that option available to go to the Tribunal, get an order, gain access, do the work, and you haven't taken that up as an owners corporation.

Reena Van Aalst: Yes, exactly, Amanda. That's what I recommended to my strata committees to do because, unfortunately, there are some people who sometimes, I mean, in my experience it's been it's not just saying no for the sake of no. A lot of people just are aggressive. They have a problem mentally and it's hard to get into those apartments.

Amanda Farmer: Yes, and bear in mind also that lot owners can install their own safety devices, and Section 118 does take that into account.

Reena Van Aalst: Yes.

Amanda Farmer: Where a lot owner has done the work, then they have to ensure that it's done competently, that it's done properly. And they actually have to tell the owners corporation that they've done it. So that is set out in Regulation 31 of our Strata Schemes Management Regulation. The owner must give written notice of the installation to the owners corporation within 7 days.

So you might find, Reena, where you're chasing up some of these owners, they're going to tell you, oh, well I've already done it, and they may not have realised that they should have provided written notification.

Reena Van Aalst: Yes. Actually, that's a very good example you mentioned, Amanda, because I did actually have an owner in one of the schemes where we were following up whether or not a number hadn't yet, according to our records, had not yet had their window locks installed. But then when we were sending out a new notice, they wrote back to us and said we've already done it ourselves.

Amanda Farmer: Yes.

Reena Van Aalst: So, again, I think you're right. There's many people that don't know that there's a requirement to notify within 7 days.

Amanda Farmer: Yes. Great. And then once you've been told, then you've got that notice which is good.

Reena Van Aalst: Yes.

Amanda Farmer: You know that it's there. The other thing that I know a lot of buildings are doing, I'm not sure if you do this with your buildings, Reena, is they are going ahead and installing the locks and they are then passing a by-law which sets out the procedure, if you like, around how to deal with those locks in the future.

So if they are in need of repair or replacement, if the owner has removed them, what is the owners corporation's responsibility? And our legislation is not very clear around what happens after the locks have been installed. So I certainly have been asked to draft, and have drafted for a number of buildings, what I call a window locks by-law which sets out the procedures around what is to happen once the locks are installed and says things like if they are in need of repair or replacement, then it is the responsibility of the lot owner to let the owners corporation know about that and to facilitate access for that purpose.

Reena Van Aalst: Yes, that's excellent. That's a great idea.

Amanda Farmer: That can be a helpful by-law.

Reena Van Aalst: Yes.

Amanda Farmer: Have a think about that one.

Reena Van Aalst: Yes, that's a great idea, Amanda. Thank you.

Amanda Farmer: All right, I'm going to get into my challenge for this week. This is a question that was raised at a recent live event that I attended. And I was, fast and furiously as I like to do, answering as many questions as I could on my feet that night for the attendees at the event.

And in the course of that Q&A, I was asked this question. Is the Secretary of a strata committee entitled to see a copy of the strata roll without paying the inspection fee? So what we're talking about here is anybody who's listened to this podcast for a while, or listened to me present about strata issues, will know that our law permits owners of lots to inspect the records of the owners corporation.

Those records include the strata roll and owners are therefore entitled to access and inspect the strata roll, which contains all the contact details of owners and residents in the building. Now, the legislation also says that if someone is going to inspect the books and records, then they must pay a fee. And that fee is set at I think it's \$34 and 10 cents.

Reena Van Aalst: 10 cents.

Amanda Farmer: There we go. That is the fee set out.

Reena Van Aalst: It's a statutory fee.

Amanda Farmer: Yes. It's in the legislation so it's not something that your Strata Manager makes up. And it is a fee that you pay, check, cash, whatever it is that your strata manager requires when you sit down to inspect the records at their office. And the specific question that was raised with me, and I think it had come through advice maybe from somebody's Strata Manager, that if you are the secretary you are the only person who is entitled to look at the records of the owners corporation, including the strata roll, without paying the fee.

And I sort of scratched my head about that and thought, "I don't understand that. I don't know where that's coming from." I couldn't think of a section of the legislation that said that.

Reena Van Aalst: I mean, my thoughts are that we don't charge them because, I mean, the Secretary is the one that under the Act is supposed to maintain the roll. Even though it's still up to the agent, that is one of their questions. But I don't know where it says in the Act that they don't have to pay.

Amanda Farmer: Yes. Very interesting point. I have since been reading, just in another context, about the functions of the Secretary. And exactly what you say, Reena. A function of the Secretary is indeed to maintain the strata roll, and that is found in Section 43, Subsection C of our Act. A function of the secretary includes to maintain the strata roll.

So on that basis I imagine this particular strata manager had told this owner because you or your Secretary has the function of maintaining the strata roll, then they can access a copy of that roll and don't need to pay the fee. Now, it doesn't say anywhere, I agree, Reena, in the legislation that they don't have to pay the fee. But I suppose if they are exercising their function as Secretary, they are not actually exercising their right to access the books and records. That's something quite different.

Reena Van Aalst: That's right. So what I would say, Amanda, on that particular query that you had at your Q&A is that the function of maintaining the strata roll is then delegated to the agent. Obviously the secretary is not receiving the Section 22 notice as the secretary is not actually going into the system and updating the address details, the contact details.

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Reena Van Aalst: So from a practical point of view, that function is delegated to the managing agent. Now, in terms of the fee, that's a separate issue and I would say to any manager out there that, in a sense, when you're working with the committee I don't believe the community should be charged for an agent assisting them to sort of exercise their functions as a strata committee. And that would include seeing the strata roll for whatever purposes.

So on the whole, as far as I am aware, most of our managers don't charge a committee member or the secretary in this particular instance for a copy of the strata roll. Because it's something that can be easily obtained from software. And in a sense I think it's part of just a good working relationship where something that is readily available, that doesn't take the managing agent a lot of time to actually provide, should really be done at no charge.

But I don't believe that there's anything in the legislation that states that, really. I mean, at the end of the day there is a bit of time expended, but a strata search usually takes a lot more time than just providing someone with a copy of the strata roll, especially the Secretary. So we have had occasions where an owner wants to do a search and they want a copy of the strata roll. They don't want to come in for it. They just want the strata roll.

We said, "Okay, just pay the fee and then we'll provide you with a copy." So it's a bit different, I think, when you're trying to assist the Secretary to carry out their statutory functions, versus someone that just wants something for whatever purposes.

Amanda Farmer: Yes, and that might be a relevant consideration. What is the purpose for which the Secretary wants the strata roll?

Reena Van Aalst: Yes.

Amanda Farmer: Is it so that they can then go and email every owner, asking them to support their motion at the upcoming general meeting?

Reena Van Aalst: Exactly.

Amanda Farmer: Or is it actually to check that, oh, hey, we've got new people in Lot 20 and Lot 36, and I just want to check that their details are up-to-date on the strata roll, which is indeed-

Reena Van Aalst: Yes, or is that apartment owner-occupied or rented out, for example? They wouldn't know that if they don't get a copy of the strata roll, Amanda. So yes.

Amanda Farmer: Very interesting question. Another one of those little hidden gems in our legislation that we don't, I don't, always remember where everything is. And it's always good to get those unusual, different questions and improve our education in the process.

Reena Van Aalst: Yes. Actually, I wanted to congratulate you, Amanda, on your Q&A podcast. I thought it was a very good selection of questions and answers. So I think for a lot of people out there, both managers and owners, I think it gave a good overview of the challenges and issues that they have probably experienced but never really asked the question.

Amanda Farmer: Thank you very much for that. I'm glad you enjoyed it. For anyone who has not yet come across it, it is Episode 158 of the podcast, and it is a recording from a live event that I delivered in Sydney for Waverley Council a couple of months ago now. And it is just that section of the presentation where I jumped into some Q&A with audience members. Which I absolutely love to do. And, as I've said, helps me learn as well.

Reena Van Aalst: Yes.

Amanda Farmer: Okay. Let's shift gears and jump into your win for this week, Reena.

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Reena Van Aalst: Yes, I recently took carriage of a company titled building and I had my first meeting with the board members a few weeks ago. And in that meeting the board members advised me of a very difficult owner who's been causing them a lot of grief. She actually wanted to get the company to replace a mezzanine section of a structure in the building, which obviously the company had not actually constructed.

For many of you, perhaps, who are listening, some strata managers may manage company titled schemes which are obviously very different to strata. The company actually owns the building and all the owners are actually shareholders. Like Woolworth, for example. Woolworths could own the building that you live in and then you're just a shareholder and basically your share numbers allow you to occupy a certain apartment.

So in this particular case, we provided the shareholder with a goodwill gesture by saying that we would do certain things for her which the company really wasn't obligated to do. Just like in an owners corporation. For example, if there's some damage then you might say, okay, you might pay a bit more than you should. Even though I'm not advocating this in terms of a strata scheme.

Reena Van Aalst: But the win for this, Amanda, is that by just doing something very small, which is over and above what the company was obligated to do, immediately the owner agreed that she was happy with this. The other repairs could be done which the company was responsible for. But it just goes to show you sometimes if you can just do something very small for someone, sometimes you can get a good outcome. You can reduce the animosity and you can get it like a win-win situation for everybody.

So, I mean, I was surprised. I was waiting for her to come back with this huge email which I had received prior, because she had wanted to attend the board meeting and, of course, again it's not the same as a strata committee meeting where owners are entitled to attend but not speak if the committee doesn't permit them to do so. In this case, obviously, the board said no.

And so then I get this whole email about what she used to do when she was a board member, et cetera. So when I sent the email, I was just waiting for her reaction. And it was totally the opposite, and everyone was flabbergasted. I'm thinking, wow, it's such a good move by the directors just to give her something a bit more than what they had to.

Amanda Farmer: Yes.

Reena Van Aalst: And it resulted in a win-win for everybody.

Amanda Farmer: Yes, it's that principle of reciprocity, which is basically you do something for me, I do something for you. And we can forget about that when we are very regularly engaged in applying the law and applying the procedures and making sure we do everything right. Most of the time that's a really good policy and you should follow that one.

But occasionally we need to step outside of the box and think a little bit more creatively and say, look, if we do this thing, as you say, go above and beyond, we don't necessarily have to but it's not harmful to anyone. It's not breaching the law. We have the money, we have the agreement of everyone to do it. Then we might get these other wins on the board as well. And that is a proven principle of human nature that we do like to give back when we are given to.

Reena Van Aalst: Yes. And I think, Amanda, in strata sometimes people are worried by going above and beyond because they're worried that it might create a precedent. I always get that a lot. You know, but if we do it for this person we've got to do it for everybody else.

And sometimes you've just got to think about, well, what is the cost of going to Tribunals and mediation and all that sort of thing? Apart from the financial cost, it's the ill will that's created between that owner and the owners corporation. And so I think sometimes, as you've said, that concept of going above and beyond, it's something that perhaps we should all think about from time to time when things have become intractable with certain particular owners in schemes that we manage.

Amanda Farmer: And therein lies the skill of the strata manager, doesn't it?

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Reena Van Aalst: Yes.

Amanda Farmer: You need to have also, as well as all of your administrative and your-

Reena Van Aalst: Accounting and legal and psychological.

Amanda Farmer: All of that. You've got to have psychology, that's right. Yes, understand how the mind works.

Reena Van Aalst: Yes.

Amanda Farmer: Good stuff. All right. Well, the win for this week that I want to share is to make sure that all of our listeners know about an event that the Women in Strata group is hosting. And it is next Thursday, the 30th of May. That has come around really, really fast. And both Reena and I are members of the steering committee for Women in Strata, supporting women who work in strata management and also those who support women working in strata management.

And the event is, a drum roll please, a karaoke night. Yes, I'm looking at Reena on video and she's looking very uncomfortable about this.

Reena Van Aalst: No, no. I think it's a fantastic event.

Amanda Farmer: Yes, it's going to be a wonderful event. Our steering committee has worked very hard, especially Sarah Smith and my husband Robert, on this particular event. It's going to be at Doltone House in the city on Elizabeth Street next to the Sheraton On The Park.

So a great location. For those of you that have been to some of the SCA events there, they're fantastic. And the purpose is also for all the ticket receipts of \$20 per head to go to Share the Dignity, which has been a charity that one of our members, Natalie Fitzgerald, has actually focused on. And we're all proud to be supporting that particular charity as well. It is an absolute steal to be able to go to a location like Doltone House to have a drink with your colleagues, have some food, enjoy some karaoke. I think there will be a special guest performance too.

Reena Van Aalst: Yes, you didn't forget.

Amanda Farmer: Details of which may have been released by now, but it's very exciting. All for 20 bucks and that \$20 going to charity. It's awesome.

Reena Van Aalst: Yes, it's fantastic. So for those of you managers and people that work in strata, and even those of you that don't work in strata, to me it's just going to be a fun night.

Amanda Farmer: Yes. And we have encouraged, haven't we, Reena, guests to bring along a friend or a colleague?

Reena Van Aalst: Or their partners even.

Amanda Farmer: Yes, to make it a community event. Now, we do have very limited spots and I'm sorry if this is going to air at a time when we may have sold out. But do head over to the Your Strata Property page where you'll find this episode and I will put the link to grab your tickets for the event. So make sure you get yourself into that, and you can see Reena and I there on the night. Love to see you.

Reena Van Aalst: Yes, definitely, Amanda. I'm looking forward to seeing some of our podcast listeners. Some people have said to me, "Oh, I can't come to the karaoke night but hopefully another Women in Strata event." So for those of you that perhaps haven't met Amanda and I, we'd love to see you.



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Amanda Farmer: And men as well. We love our male supporters of Women in Strata.

Reena Van Aalst: And men. Yes, we do.

Amanda Farmer: I often get questions, can men come to the event? Of course. We'd love to see you.

Reena Van Aalst: Yes. Yes, exactly.

Amanda Farmer: All right. Well, that is about it from my side this week, Reena. Anything else to add?

Reena Van Aalst: Nothing to add, Amanda. All good.

Amanda Farmer: That is a wrap. I'll see you at the karaoke night.

Reena Van Aalst: See you then. Bye, Amanda.

Amanda Farmer: Bye.

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