

Publication Date: 16 July 2016
YSP Podcast Transcript: Episode 020. Can you legally record a strata meeting? -
with Hallie Warnock

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Amanda Farmer: Hi everyone, you're hearing from me straight up this week because I've got 2 important things to let you know about before we get stuck into my interview with Hallie Warnock which, by the way, is on a topic that I know is going to be of real interest to so many of you. Hallie and I are talking about the use of recording devices in strata meetings, and the steps that you can take to ensure that, if you're recording a meeting, you're doing so in a way that's within the bounds of the law, so great episode coming up for you but firstly, my 2 announcements. These announcements are specific to listeners in New South Wales.

Firstly, we finally have a date: a date for our new strata law. We're told that these laws are going to be taking effect from the 30th of November 2016. We're still waiting to see the final regulations and we're told to expect those within a few weeks, so I'll keep you updated on some key aspects of that law and how I think it's going to impact you as strata owners, managers and key players in the sector.

2nd announcement: those of you who have subscribed to the Your Strata Property mailing list will already have received an email about this but some exciting news, a new offer on the website. I've produced a series of eBooks: each eBook deals with a key area of concern for strata owners and managers in New South Wales.

You can check out the eBooks on the website: www.yourstrataproperty.com.au/ebooks. The eBooks are covering 5 areas: I've got a book dealing with amendments to the Home Building Act New South Wales, and I think that's essential reading for any buildings that are pursuing building defects claims or even those who are entering into contracts for residential building work.

I've got a book that deals with window safety and how to bring your building into compliance with the new window safety laws which are due to start in less than 18 months now.

A book that deals with fire safety, so you really need to be getting serious about fire safety in your building and I specifically use a case study, and that's the Connie Zhang case study, a really sad case study that happened here in Sydney, and set out some key takeaways from that sad scenario that you can make sure that you're implementing in your building today, to avoid those tragic consequences.

Another eBook: swimming pools. Ensure the safety of your residents and visitors by complying with new swimming pool safety laws, and these are really brand, brand new laws here in New South Wales.

And another book dealing with asbestos. So each book's available for purchase for a modest fee, and I think they're packed with value. If you've taken the opportunity to purchase one – and I know a number of you have already, thank you – drop me a line, let me know what you think of the content and if you like the idea of receiving information in the eBook format, let me know.

Let me know what other topics you'd like to see covered. There are certainly more eBooks in the pipeline, and I do want to make sure that I'm covering the areas that are most important to you. So please don't hesitate to get in touch. Alright, thanks for that indulgence, on to episode 20: my interview with Hallie Warnock. Enjoy.

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. Today, we're joined by a member of my team at Lawyers Chambers, Hallie Warnock. Hi, Hallie.

Hallie Warnock: Hi Amanda, thanks for having me.



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Amanda Farmer: My pleasure. Now, Hallie is a paralegal and final year law student. She's a graduate of the University of Texas in Austin for International Relations, Global Studies and French.

She's currently enrolled in the University of Sydney's Juris Doctor Law program where she has been the recipient of the Wigram Allen scholarship.

Hallie was a Rotary International exchange student from 2008 to 2009 on a full scholarship in Saint-Nazaire, France where she acquired fluent French. She acquired her interest in law while working at a Dallas law firm.

Hallie's interest in diversity and new challenges has led her to Sydney, and in particular to Lawyers Chambers, where she's been part of our team for over 3 years. Gosh, that has gone really quickly. She is well known and loved by many of our clients, particularly for her Southern charm if I may say so.

Today, I'm delighted to welcome Hallie Warnock from Lawyers Chambers. Welcome, Hallie.

Hallie Warnock: Yay, thank you again.

Amanda Farmer: Now Hallie, I've invited you on the show today because I know that you have recently completed some research on the topic of using recording devices in strata meetings.

This is something that I come across quite regularly in my career as a strata lawyer, the question of whether strata meetings can be legally recorded and, if they are recorded, whether that recording can be used.

So, Hallie, I'll start by asking you to tell us: why is the recording of meetings such a critical issue for people living in strata?

Hallie Warnock: Well, living in strata means that once a year, with annual general meetings, or sometimes multiple times a year with extraordinary general meetings, they're going to be conducted and people are going to want to possibly record. During these meetings, important matters are discussed and decisions are made, and unfortunately sometimes dispute arise or there's ongoing litigation. Because of this, people feel the need to want to have an accurate recording of what happened. They don't want to be misrepresented or they worry that the minutes won't accurately reflect what happened.

So, what better way than to record? But the next question then becomes: can you legally record an EGM or AGM? And if you can, where are the legal limitations, both as an owner and as an attendee, in the meeting?

Amanda Farmer: So, what do you think Hallie? Is it legal to record a strata meeting or how can someone legally record a strata meeting?

Hallie Warnock: Well, if I had to give a one-line answer, I would say generally no, but you can with consent and there are a few exceptions.

Amanda Farmer: Okay.

Hallie Warnock: So let me just start by saying the statute that regulates the recording of conversations in New South Wales is the Surveillance Devices Act of 2007. The general rule laid out by Sections 11 and 12 says: "it is illegal to publish or possess a private conversation without consent."

So in most cases, once again, it's not going to be okay to record unless you have consent, and additionally, possessing a conversation that's been obtained illegally is also an offence.

Amanda Farmer: Wow, interesting. Okay, so obtaining that consent... how might we do that in the context of a strata meeting?

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Hallie Warnock: Well going back to what I said at the beginning, there are exceptions.

So one of the exceptions is if you have the consent of the principal parties, either expressly or impliedly. So in the context of an AGM or EGM, what you would do is: at the beginning of the meeting, you would say, "I would like to record this meeting, does anyone have any objections?"

So by calling for objections, and if no one replies disagreeing to you recording, that's implied consent or that's consent, and that could give you grounds to record the meeting.

Amanda Farmer: Yes, I like that idea and I've actually seen that work well at some meetings that I've attended where there have been lot owners who have wanted to record, and even moving and passing a motion that the meeting be recorded, and having it recorded in the minutes that that motion was resolved is something that I would recommend owners corporations do, and lot owners encourage and attempt to obtain that resolved motion, so that it's reflected in the minutes that recording was permitted by the majority of owners present at the meeting.

Okay Hallie, so you mentioned there the Surveillance Devices Act, and you mentioned some exceptions to the rule. Can you just explain that a little bit more for us?

Hallie Warnock: Yes. So to elaborate on the exceptions, most of them are for law enforcement officers, however there are a couple under Section 7 Subsection 3 of the Surveillance Act that let you record, and the main one that I'm going to mention is that it requires "a principal party to the conversation consents the listening device being so used and that it is reasonably necessary for the protection of the lawful interests of that principal party."

And to break that down a bit, the 2 main parts of that are 'lawful interest' and 'reasonably necessary', and this is an exception that I wouldn't try to rely upon because it arises in limited circumstances.

So it's pretty much allowing an exception for someone who feels really threatened or in danger, this is going to let them to be able to record without the consent. But once again, I wouldn't really rely upon it and there's not a lot of case law, especially in the context of an AGM or an EGM.

Amanda Farmer: Right, okay. Alright, so we need consent, expressed or implied consent, and we've talked about how we suggest owners might obtain that, and we've talked about an exception to the need for consent, and that's where it's reasonably necessary to protect your lawful interest, so really where you're under some severe distress, intimidation, perhaps a threat of violence. Alright, and cases: so no cases specific to strata, cases not specific to strata?

Hallie Warnock: So, there's a case in South Australia called Alliance Craton and Quasar Resources. Apologies to Quasar if I'm butchering the pronunciation of their company name. But that was actually about corporate meetings, so applying it to this context where it's New South Wales and it's strata meetings, that'd be a bit of a stretch and it's pretty distinguishable on the facts.

But one principle that you could take away from it is, in the context of meetings, you need consent and if the majority is telling you that you can't record, then you can't record.

Amanda Farmer: Okay, so that's what happened in that case? Is that right?

Hallie Warnock: Yes.

Amanda Farmer: There was no consent, the majority said no consent, and the recording wasn't legal.

Hallie Warnock: Yes and the question of the case was: can majority of the meeting objecting to the recording, even if the recording was otherwise legal, could that stop the person from recording? And the court decided, yes... the majority not

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consenting, that was enough.

Amanda Farmer: Okay, that's really interesting and it's not unusual that we would take corporations law cases and attempt to – sometimes successfully, sometimes not so successfully – apply them to the strata context, so that's an interesting case to keep in mind. I might put the details of that case in the show notes if anybody wants to look that up.

Alright Hallie, have you got any stories about how you might have helped a strata owner or strata building in respect to this issue?

Hallie Warnock: Yes. So recently, there was a matter where a lot owner actually tried to get a compulsory managing appointment made through application through an adjudicator.

Amanda Farmer: Can I just stop you there Hallie... so that is the compulsory appointment of a strata manager?

Hallie Warnock: Yes.

Amanda Farmer: Yes, okay.

Hallie Warnock: And they wanted to do this and we were acting for the incumbent executive committee, and essentially the lot owner put forward that, during a general meeting, the majority of owners had acted unreasonably in denying some recommended works.

So the central issue, well one of the central issues, became what was said at this meeting and actually what had happened was someone who was present at the meeting had recorded it, and as we had said before, you need consent and they had done the steps necessary to obtain consent: they called for objections, no one objected.

And so they recorded the meeting and, because of this, we got to rely on the transcript of the meeting as evidence, and we got to prove that the majority of the owners weren't acting unreasonably, and as such, we got to have the application for the order denied.

Amanda Farmer: Awesome. Good result, and that's the kind of situation where your lawyer's going to be very happy: when you are handed a transcript and you say, "how did you get this transcript, where did this come from?", and it is music to your lawyer's ears when you say, "Well I recorded it at a meeting." Did you have consent? "Yes, I did. I called for objections, there were no objections, and there is a minute to that effect." I just want to make this clear: I certainly don't encourage lot owners to record meetings, it's not something that you need to do as a matter of course, but if you feel that you are in a situation where litigation may result, and you think that recording the meeting is going to be helpful and in the best interest of the owners, then certainly take that step... but as Hallie's telling us, you need to make sure that you have express or implied consent, and hopefully we've given you some tips there for how you might obtain that.

Okay, so Hallie, some misconceptions around the recording of strata meetings... can we clear up some of those?

Hallie Warnock: Yes, so I feel as though people fall into 1 of 2 categories with these misconceptions: either they think they always have the right to record no matter what, or conversely that people never have the right to record and, as we discussed, the truth really falls somewhere in between and it relies heavily on consent.

Amanda Farmer: Awesome. Alright now Hallie, you're a first timer to our podcast, so you're going to get the book question: what books have had the greatest impacts on you and why?

Hallie Warnock: The 2 books that have had the greatest impact on me are: 'To Kill a Mockingbird' and 'The Autobiography of Malcolm X'. I read them a long time ago and they've really stuck with me throughout my life, I've read them a couple of times, and they really changed my perspective on life and how I view things, and that's why they really stuck with me, and the common message that they both shared was that people are stronger when they work together, rather than divided. So I guess, if I was

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going to tie it in with strata, it would be that the owners corporation works best when they're together and not divided.

Amanda Farmer: That is so very true and something that we talk about a lot on this podcast: a sense of community, working together and working towards that common aim of having a community to be proud of. Thanks for sharing those books with us Hallie. How do listeners find out more about you, and is there anything you'd like to add before we say goodbye?

Hallie Warnock: I just wanted the listeners to take away that this is by no means a straightforward matter, and when applying it to something like an owners corporation meeting, the answer becomes even more difficult. So when in doubt, the best policy is to ask, and if you don't get consent, don't record, and if you need more advice go seek legal help and keep Lawyers Chambers in mind.

Amanda Farmer: Thank you Hallie, and thank you very much for your guidance and your advice on this vexed topic, and I'm sure that our listeners out there have some key take-home principles that they can share with their fellow owners, their committees and maybe even their strata managers. Thanks, Hallie, catch you next time.

Hallie Warnock: Thanks Amanda.

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 by the show notes at www.yourstrataproperty.com.au. You can also ask questions in the comment section which Amanda will answer in her upcoming episodes. How can Amanda help you today?

