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YSP Podcast Transcript: Episode 021. How the new NSW laws affect your strata management contracts - with Natalie Fitzgerald

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Amanda Farmer: Hello and welcome. I'm Amanda Farmer and this is Your Strata Property.

Natalie Fitzgerald is the managing partner of Strata Sense, providing owners corporations with solution-driven strata management packages.

Natalie has experience spanning over 14-years in the industry and was the winner of New South Wales Young Strata Manager of the Year in 2011. More recently, Strata Sense won Best Small Strata Management Company at the 2016 Strata Community Australia Awards.

Natalie is the foundation content expert for the City of Sydney Council's 'Strata 101' workshops, a series of adult learning workshops focusing on a number of important issues for those living in, or considering the transition to strata living. Natalie continues to work with the City of Sydney in developing and presenting the workshops.

In addition, Natalie presents at state and national conferences and writes for industry publications. Natalie sits on the steering committee of Women in Strata, a networking group for women working in strata management.

Today, I'm delighted to welcome Natalie Fitzgerald of Strata Sense. Welcome, Natalie.

Natalie Fitzgerald: Thank you, Amanda. It's wonderful to be chatting to you this afternoon.

Amanda Farmer: Absolute pleasure to have you. Now Natalie, what we're going to talk about today is strata management contracts: the contract between a strata manager and an owners corporation, or a strata building – we call them agency agreements in the industry – and the reason we're talking about them is because in New South Wales, we're about to have a change to the law – we now know that's coming into effect on the 30th of November – and there's something really important in there about strata management contracts and agency agreements that's going to affect both strata managers and owners.

So what I want to ask you, Natalie, is to tell us why you think New South Wales strata buildings and strata managers need to be looking at their strata management contracts now?

Natalie Fitzgerald: There are 2 main elements: the 1st and the most important one is the term of the agreement which previously, and in some companies, it's been practice to let those agreements roll over for 3-month periods for an indefinite period of time. Under the new legislation that won't be possible anymore, so agreements will need to be signed for no more than a period of 3 years, and will no longer be able to roll-over essentially. There's some element to extend that, through resolutions of the executive committee but, for the most part, you'll need to have current and up-to-date strata management agreements.

So the important thing for strata managers is to start managing that process now, rather than waiting until the last minute and suddenly needing to call a great deal of extraordinary general meetings.

The other is delegation and a requirement that each matter that the strata manager is dealing with needs to be listed as an item that they're authorised to deal with now, under the agency agreement. So there's a little bit more transparency required, in terms of what the actual tasks are, but more important is this issue of making sure the term is current and up-to-date.

Amanda Farmer: Yes okay, so we're moving to maximum 3-year terms. There's certainly some strata management businesses



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that I know out there that have a standard 5 year term, so that's going to be a bit of a change, and there is some detail in the legislation as to what happens to agreements that are currently more than 3 years once the new legislation comes into effect. Do you know about that Natalie? Can you tell us a bit about that?

Natalie Fitzgerald: Sure. So essentially any agreement, say if I was to sign a 5-year agreement today, I will lose those additional 2 years.

So, retrospectively, no agreement can be longer than 3 years once that new legislation comes in. There has been talk of allowing an additional 6 months for new agreements to be signed up to term, but there will be no ability to extend further, so there's no point in people running out now and signing a 5 year agreement because it's still only going to have a 3 year effect once the new legislation comes in.

Amanda Farmer: Yes, absolutely. I agree with all of that. Okay, so you mentioned that there are a few new things under the legislation that strata managers are going to be required to do and be responsible for, and you're suggesting that those things should be set out in the agency agreement. So what's a good strata management contract going to look like under the new law? What kinds of things should be in it?

Natalie Fitzgerald: The new agreement is going to have to be a step-by-step guide as to what you actually have authority to do as a managing agent, but you also want to include anything you may need authority to do later on because the way it's being written at the moment, and the way it's being interpreted, is that if it's not in that agency agreement, you shouldn't be doing it. So if there's even the slightest chance that there's a task that you'll be assigned by the executive committee, it should be included as something you have authority to do in your agreement.

So basically you're going to have a very long schedule of items that you're authorised to do – that doesn't mean that you're going to run off and do them, but it just means that should that event occur, you have the authority under the agreement to undertake the task.

Amanda Farmer: Yes, a good example that I've heard around the traps is this change that we have with proxies and proxy holders and where we often have situations now that many owners will direct their proxy to the strata manager... We now have under the new law a limit to how many proxies one person can hold. So, in my mind, I'm thinking you as a strata manager will be sitting in your office, and it will be a day or two before the Annual General Meeting, and you'll be receiving via email a whole raft of proxies as you always have, appointing you as the proxy holder.

You then have to somehow explain to those owners that "hey, I can only hold a handful of proxies, depending on how big the building is, and I've got to return a lot of these to you."

I think strata managers need to be thinking about how much of their time that's going to take up and whether they're at liberty to charge for that time under their agency agreement.

Natalie Fitzgerald: That's a really good example, and there are many issues in relation to meetings in particular that are going to take a lot more time and care from the strata manager, and it's essential that these new elements of management that are required are dealt with in the agreement, and that there is an ability to either charge for that, or that strata managers are already looking ahead and increasing their fees accordingly to make sure that their additional fees and time spent to properly manage the building are being accounted for. Another example is the need to hold tenant meetings, which is clearly more paperwork, an additional meeting... there needs to be an ability in the agreement to recover the cost for that, not only to recover the out of pocket but also clearly to be making a profit because frankly, we're all here to be in business, for the additional work that's required to do that.

Amanda Farmer: Yes definitely, and I think a good strata manager, a good strata management company and a good strata management contract has a lot of transparency around those things. So yes, you might be putting your fees up, your fee for service over a period of a year might be higher, but you're explaining to your owners why that's the case. It's because we have to be

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communicating with tenants now, there's a whole lot of paperwork behind that, we have to be holding tenant's meetings and we have to be dealing with proxies.

I think that's going to be important for strata managers to explain to owners – both their current buildings and any newer buildings they're quoting for – why it is that our fees are set this way. Because it might be that you're competing with the next strata manager down the street, and their fees might be a lot lower but they're not covering and dealing with these things in a way that's expressed and transparent in their agreement, so the costs then come as a surprise to their buildings.

Natalie Fitzgerald: Definitely, and for many years now, strata managers have almost shied away from charging fees for service which, as a professional service, makes no sense whatsoever. You see a doctor; you pay a fee. You ask a lawyer for advice; you pay a fee. Strata management is absolutely no different to that and in fact with the legislation changing, it's going to be like that more and more. So I think it's about time for strata managers to be having open, honest, transparent conversations with their clients who, let's be honest, are professionals in different aspects of their lives in themselves. I've certainly learnt over the years that there's no fear in having a conversation about money or a fee for service because your clients will understand that you're doing a task for them and there's a fee attached to that.

Amanda Farmer: Yes.

Natalie Fitzgerald: And if they don't understand, then you need to give consideration as to whether or not they're the right client for you.

Amanda Farmer: Yes, I completely agree with you, and I think when you're charging proper and reasonable fees, there is then a value placed on your service, and comparing lawyers to strata managers is a really good example because the way that lawyers charge and have charged for many years, is based on a billable hour – and sometimes that's appropriate, sometimes it's not – but it seems to be that the fees often aren't questioned because there's a value placed on the service that lawyers are providing. Whereas, strata managers, I see you guys nearly every week struggling to explain yourselves and explain the value of what it is that you're doing, and I completely agree with you. I think, and I hope, what this new law will do is bring strata managers together, bring them on board to be promoting their industry as a true profession and one that values itself and that's then valued by its customers.

Natalie Fitzgerald: Look, at the end of the day, there's a great complaint amongst strata managers that the fee per lot, if you're going to average it out, just isn't enough for the amount of service required. But at the end of the day, if we collectively continue to undercharge, then that's never going to change. So it's a matter of appreciating your own level of professionalism, trusting the client – and to me that's really key – to understand the level of professionalism that you're providing, and the fee then kind of falls into itself, and sometimes that's a matter of looking at the clients and assessing what's the right fit for you, and perhaps changing the business model.

But the 'one size fits all' certainly doesn't work anymore and it's a matter of doing the math, which is something that so many strata companies don't do. How many hours a week are you spending, how much is that costing, is there a profit at the end the day? If there isn't, why are you managing the scheme, because you are a business.

Amanda Farmer: And my recommendation for strata managers who are uncomfortable or don't feel confident doing the maths and playing with those figures is to get someone in to help you, there's any number of experts out there who can help you plan, do a business plan, do a profit forecast and make sure that you're charging the right amount, specifically with these new laws in mind.

Natalie Fitzgerald: Absolutely, and it can be difficult to separate yourself from the personal because you are dealing with people's personal assets and their homes, but at the end of the day, you're also running a business. There's no reason why you can't provide a personalised service but, at the same time, wear a business cap when you're analysing the numbers, and at the end of the day, like any other business, it's a numbers game.



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Amanda Farmer: Yes, I like it. Okay, let's move on. Natalie, can you share with us the steps that Strata Sense is taking to deal with these upcoming changes to the law?

Natalie Fitzgerald: We've had a flexibility in our business in that (1): it's quite new, so it's normal for us to implement change and we do that on a regular basis. So the first step was Mark and I have always been up to date on what was happening with the legislation changes, actively involved either through SCA, OCN or other different mechanisms, so we knew what to expect. It's been apparent for some time now which changes would definitely come through and which ones may or may not.

Because we don't use a standard industry agreement, because we use our own agreement, we're in a place to be able to make changes to that when we need it, with the flexibility that we need it. So the flexibility for us was having an agreement that we could change as it suited us and when it suited us, keeping in mind the legislation we knew was going to change.

So we've been out to do that for quite some time now. We have never had agreements that weren't current anyway, but it's certainly been the motivation at every single AGM to make sure that we have current and updated agreements. Agreements that may have 12 months left to run, we're re-signing now to make sure that the agreement is covering everything that we need.

So it's just forecasting ahead, it's looking at technology to make sure that we can meet all of the requirements of the new legislation. For example, being able to hold meetings by Skype, which is exciting and such a fantastic step in the right direction.

So it's just about investing the time, Mark has stepped away from our portfolio and has been spending half of his time, at least, amping the business up, so it's been an investment to make sure that we're already there as opposed to starting a step behind.

Amanda Farmer: Yes, exactly and whilst it is hard work, it's time-consuming and no doubt there's an expense to your business in having to step away and do all of this, the hope is that that's an investment that is then going to pay dividends down the track when you guys are really well placed to keep on providing that high level of service and providing that value to your buildings.

Natalie Fitzgerald: Absolutely. We see it as an investment on 2 ends: (1) in already being there when everyone else is struggling (2) there's an ability to charge more for providing a better service.

Amanda Farmer: Yes.

Natalie Fitzgerald: But there's also these companies who have been somewhat complacent and they haven't been renewing management agreements and keeping up to date, and all of a sudden there's going to be a whole lot of strata plans out there saying "what else is available?"

Amanda Farmer: Oh, yes.

Natalie Fitzgerald: And when we can put a package on the table and say, "well, here it is and we've already taken care of this, and of course, you can have your Skype meetings and here's a system for looking after your proxies", and have it all ready now, instead of 12-months down the track when everyone else is starting to catch up, and that puts us in a really good market position as well.

Amanda Farmer: Yes, sounds good. Okay, more general question. What are some of the common problems that you've noticed strata managers are facing when it comes to their contracts and what's working for you in terms of overcoming those problems?

Natalie Fitzgerald: I think one of the biggest problems I've noticed is being brave enough to put the contract on the table when there has been no mention of it. So it's very easy to let strata contracts just pass by and expire and roll-on month by month, particularly when the industry agreement, for example, has a 4% average increase every year, it happens.

It's very easy to just ignore the fact that that agreement has technically expired and let it roll over. So it's being brave enough to say

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to your client: "here's our agreement, do you trust me to sign this for at least another 3 years, and here's the fee, and here are some additional fees because there's additional work I have to do."

Natalie Fitzgerald: So it's accepting your own level of professionalism and having confidence that you're doing the right thing in putting it on the table.

I think, if you know there's a service issue, and let's be honest we know in ourselves if something's not working quite right, it's being willing to pick up the phone and face that front on and deal with whatever the issue may be, so you're then in an easy position to put that contract on the table. So it's a lot of inner soul searching, I suppose, in terms of where the service is for the clients that overall it's going to be positive for the business to know where you're standing.

Amanda Farmer: Yes, definitely. Okay, we've got some listeners no doubt, who are strata managers – I know you're out there probably listening keenly to all of this – and also strata owners and committee members who might be thinking: "Oh wow! I didn't know any of this was happening, it's time to go and dig out that agency agreement and see where I sit or maybe have a chat with my strata manager." What would you suggest Natalie that both managers and owners could be doing, or should be doing, now? Some quick action steps they can take maybe tomorrow to get involved in this issue?

Natalie Fitzgerald: Definitely the very first is read that agency agreement and know what the term is, if there is a term, but also the delegation under that agreement and what implications it may or may not have, particularly in relation to commissions because the whole process around those is going to change. For example, you may have signed an agreement 5 years ago where a commission was 15%, now you're taking 20%, but your agreement says 15%, so suddenly there's a discrepancy that's quite important. So really it's taking the time to review what that agreement is, make sure you're at the very least, complying with that agreement and then talking to each client individually.

There's no reason why each agreement can't be different, each to the other, in terms of the service being provided and making sure that each client is happy with what you're signing out.

Amanda Farmer: Yes, I really like that idea of stepping away from the one size fits all approach. I can see how that would be really popular in the marketplace having bespoke agreements that suit each building and their unique issues and, as we know, buildings these days vary really widely. You've got your commercial and you've got your residential and your retail and your mixed used and no doubt, you as a strata manager are dealing with all sorts of different issues depending on the type of building.

Natalie Fitzgerald: Exactly. You can't possibly expect a four lot villa to have the same management agreement as a retail shopping centre, versus you know what may be a 200 lot high-rise apartment. They all have completely different needs and it makes no sense to have a one size fits all policy or agreement in relation to them.

And the time you spend putting together an individual agreement will save you time and knowing that you've got the right document at the end of the day anyway, so it's spend a minute here to save an hour later.

Amanda Farmer: Yes, definitely. Okay, books. Natalie, what books have you read that have the greatest impact on you and why?

Natalie Fitzgerald: This was such a tricky question. I'm a bookworm but I think Neil Gaiman once said that trying to choose your favourite books is like trying to choose the 3 limbs you're most willing to have removed.

Amanda Farmer: That is so true...

Natalie Fitzgerald: So it took me a bit of thought, but at the end of the day, I have to come back to a recent book that I read by Amanda Palmer, 'The Art of Asking'.

Amanda Farmer: Yes.

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Natalie Fitzgerald: The general message of which is don't be afraid of a 'no', trust in human compassion, trust in your circle, and trust in human beings.

And it's just taught me so much in terms of other humans and interaction, but also not to be afraid of the 'no'. There's absolutely no harm in asking for anything, whatever that may be, and Women in Strata has been a fantastic experience for me, and putting hands out to amazing sponsors and other people saying "hey here we are and this is what we're doing", and overwhelmingly the response is positive, even if the answer is no, the response is still a positive one.

So definitely that book, while maybe not the most eloquently written thing that I have ever read, had a huge impact on how I interact with other people and how I trust other people around me. So that one has been a big game changer.

Amanda Farmer: Yes, I definitely have seen Amanda Palmer's Ted Talk on that, which I imagine is a snapshot of what you've read, and I can see how what she is promoting there has the potential to really impact the way that we operate in our society, and I see you doing this with the Women in Strata committee, how we can really move ahead in leaps and bounds if we're just willing to put ourselves out there and just ask, and it's something that's so hard to do as human beings but once you've done it, you think "that was easy and look where that's taken everybody."

Natalie Fitzgerald: It's exactly like that in the business as well, there's no reason why you can't reach out and say "here's my agreement and it's due for renewal" or "here's my agreement, it's not due for renewal for another 12 months, but the laws are changing and there's a whole lot more work required, here it is."

Amanda Farmer: Yes.

Natalie Fitzgerald: And it's understanding that at the end of the day, 90% of the time you're going to fall into safe hands. Amanda is a rock star, as well as an author, and she often talks about being in a mosh and throwing herself into the arms of strangers, and most of the time, more likely than not, you're going to fall into a safe place. So if you're doing the right thing and you believe in what you're doing, then you should trust that your clients also know that and put it forward.

Amanda Farmer: I love it, and what a fabulous note to be wrapping up on. So Natalie, how do listeners find out more about you and is there anything that you want to add before we say bye?

Natalie Fitzgerald: Well, I going to add "hey, we won an award on Friday night" [laughing].

Amanda Farmer: Spoiler.

Natalie Fitzgerald: Can I add it's 2 years running, which we're very excited about.

Amanda Farmer: Yes, that is true.

Natalie Fitzgerald: We understand that we're the first small strata company to achieve doing it 2 years in a row.

Amanda Farmer: Yes.

Natalie Fitzgerald: So, we're very excited. The Strata Sense's website which is www.stratasense.com.au is the first place to find out more about us.

You can also look me up on LinkedIn and of course the email box is nearly always open, so we're here if we need to be. Sydney's Strata 101 programs which run regularly often, you'll often see Mark or myself there as well, and I recommend them, even if we're not there, to any owners looking to find more information. So, pretty out there in the strata world and we're pretty easy to find.

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Amanda Farmer: Yes. Well, thank you so much for making the time to chat with us today, Natalie. You are a font of knowledge on all things strata, and I really think this issue of contracts and agency agreements is a really pressing one, and so I've wanted to make sure that we get this information out there for all of our listeners to get on top of it. So, thank you.

Natalie Fitzgerald: No problems. Thank you, Amanda.

Amanda Farmer: Bye.

Natalie Fitzgerald: Bye.

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