

Publication Date: 7 February 2017
YSP Podcast Transcript: Episode 047. What You Must Know Before Buying in to Strata

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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. Nicole Johnston is an academic at Deakin University in Victoria specialising in Strata Title research.

Nicole's research focuses on the rights of property owners in the strata context and Nicole has a particular interest in issues arising in the early years of strata schemes.

Nicole's education background is in the social sciences, psychology and criminology and law. Prior to working in the university system, Nicole was a practicing property lawyer. Today, I'm delighted to welcome Nicole Johnston of Deakin University. Welcome, Nicole.

Nicole Johnston: Thank you so much for having me, Amanda and this is a great opportunity to discuss both my research and to engage with your audience.

Amanda Farmer: Yes. Thank you so much for being with us. I know it's a busy time for you because you have a very exciting conference coming up in Melbourne which we are all really looking forward to some overseas academics in the multi-owned properties field coming to visit us.

Nicole Johnston: Yes, we do. Yes, that's just a few weeks away now so we are going to get into action stations over here.

Amanda Farmer: I know, I know and I'm just thinking I think I first met you closer this time last year at the ACCAL Conference (Australian College of Community Association Lawyers).

Nicole Johnston: Wow.

Amanda Farmer: And I was really taken by your presentation that you gave on what's happening at the point of purchase for strata owners. What information are they or aren't they getting when they are signing that contract to purchase their strata property. And I thought that would be a wonderful topic to have a chat with you about on the show.

And I'm going to start by asking you to tell us why the point of purchase such a critical stage for people who are buying into strata?

Nicole Johnston: Yes, thanks so much, Amanda. Yes, it is a very important area for our research. First of all, buying a property that is affected by an owners corporation or a body corporate is different to buying any other type of property or any other type of residential property.

Buyers need to understand that there are responsibilities that flow from buying this type of property. They are both legal responsibilities at all liabilities and this they flow from being an owner in this property arrangement. And they also need to be aware of how well the owners corporation or the body corporate is actually functioning.

So that is particular to a property that is actually existing and I'm going to talk about the difference between properties that have already been created, already exist.

Amanda Farmer: Yes.

Nicole Johnston: And properties that are bought off the plan.



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Amanda Farmer: Great.

Nicole Johnston: So the incorporation of the body corporate or owners corporation depending on what state you're living in and the communal ownership of property adds a complex layer to the due diligence process when buying into a scheme.

So a purchaser really needs to exercise greater caution because of the known challenges that we have seen specifically related to this types of properties.

Okay, we need to really look at and investigate the owners corporation when we are buying into this type of property.

If the owners corporation or the body corporate is dysfunctional, there are many consequences and often this consequences may be negative that flow back to the lot owner who has purchased in as a result. So we have seen a number of situations where the consequences are of a financial nature.

So owners and people buying into this may be exposed to some financial costs that they haven't previously foreseen.

Amanda Farmer: And when you say dysfunctional then, Nicole what kinds of things are you talking about?

Nicole Johnston: There's a number of things and I'm going to go through.

Amanda Farmer: Sure.

Nicole Johnston: at the interview with a little bit more detail.

Amanda Farmer: Yes.

Nicole Johnston: But we are talking about things like how the financial health of the property is, if the maintenance is up to date, is there any repair or building defect issues that need to be looked at.

Amanda Farmer: Yes.

Nicole Johnston: What's the communal health that we are healthy as a community? Did people get on well with community and also within the committee and also things like litigation. Is there a lot of litigation or disputes going on within that community? So dysfunctionality or functionality is a bit of a sliding scale.

So it just depends on what's going on within that particular scheme. But owners need to be aware and purchasers certainly need to be aware of how functional that scheme is when they are buying into a particular lot.

Amanda Farmer: Yes.

Nicole Johnston: or to a particular scheme.

Amanda Farmer: Great.

Nicole Johnston: So if a purchaser is buying off the plan then, so they're buying something that actually hasn't been created yet and they've are actually are getting involved in the contract process. So in those situations the owners corporation or the body corporate has actually not been created at that stage.

Through the registration process. So you really are unable to determine how well that scheme will function in the future once it is created.



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Nicole Johnston: However, an experienced strata lawyer could provide advice about the potential hazards of buying off the plan in terms of the types of arrangements that the developer will put in place and also undertake some investigations about the particular developer and that's really important.

Each state has a different process in relation to disclosing information or disclosing the arrangements that the developer is going to put in place. So you have to be mindful that each state varies in relation to that particular aspect.

Amanda Farmer: Just drilling down into getting advice, you've specifically referred to get advice from a strata lawyer and I'll ask you maybe talk to that a little bit more.

What advice should a purchaser be getting where do they start, what kinds of questions should they be asking, what's this advice that will help them keep informed?

Nicole Johnston: Okay. So obtaining legal advice prior to the contract signing from a property lawyer with expertise in strata entitling is actually really, really important. An expert lawyer should be able to commence the due diligence process at that stage or at least ensure that there's special conditions put in the contract to ensure that an investigation of the functionality of the body corporate can actually be undertaken and therefore if you are not happy with how that particular scheme is functioning you will be able to get out of the contract.

So a strata lawyer understands what's going on within these schemes and can put these particular processes in place or these particular conditions in place.

Amanda Farmer: And we are saying that's distinct from any other lawyer I suppose without expertise in strata as well as conveyancers which we have here in New South Wales who aren't lawyers but are experienced in conveyancing.

Nicole Johnston: Correct and this is some of the research that I've looked at in relation to conveyances. And the difference between getting legal advice about the owners corporation and just transferring the property. A lot of conveyancers don't charge a great deal of money to actually go through the contract process.

But their main aim is really to review the contract, advise the purchaser in regards to the conditions of that contract and really transfer or convey the property to you as purchaser from the seller.

So it's very transactional based and that's why you see that the cost are only around sort of \$1,000 to \$1,500 for a conveyancer to do that. I think that opens people up to some problems because I think you need to get much deeper advice about some of the common challenges that arise in these schemes and you'll only do that by having someone who deals with these issues on a day to day basis.

And strata lawyers or people that are litigators in the strata area who work in firms that can actually advise their conveyancing teams about some of the issues they need to look at is really, really important.

So yes, it's going to cost you more to get that particular advice but I think in the long run, it could save you a lot and remember that a property usually is the biggest investment in someone's life.

So spending \$3,000 or \$4,000 to get the right advice may save you everything in the end.

Amanda Farmer: Yes.

Nicole Johnston: I think that you actually get someone with real experience in this area to review the contract and undertake the due diligence for you.

Amanda Farmer: Yes. Absolutely. I don't do conveyancing myself these days. I refer it out but I did in my past life and as a baby

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lawyer, did quite a bit of conveyancing. And it's interesting you say, having the expertise not only of a lawyer experienced in strata title law but a litigator as well.

Yes, we would charge our clients more for conveyancing but that's because we approach this kinds of contracts with the point of view of a litigator. We see and we know what goes wrong, what the full out is when this contracts are aren't properly put together, when the purchaser is not aware of what they are getting into.

So yes, we provide detailed advice and we get into the nitty-gritty of trying to change contract terms before they've been signed. We come at it with that view of worst case scenario and some clients love that, other clients say no, why should I have to pay double or triple what I otherwise be paying a conveyancer but I agree with you completely, Nicole it can be penny wise pound foolish when you take that point of view.

Nicole Johnston: Absolutely and I think also people just got to be a little bit more careful in relation to buying by way of auction as well.

Amanda Farmer: Oh, yes. Yes, great point.

Nicole Johnston: So inserting special conditions can become very, very difficult when you're buying something by way of auction. But there's always an opportunity to get a copy of the contract prior to an auction.

And I would make sure that you go to a lawyer, a property lawyer to have that reviewed and for them to do as much due diligence as they can before you go to the auction.

Amanda Farmer: I think that's really, really important to do that and in some states, you see a lot of properties sold by way of auction, particularly in Victoria. There's a much higher proportion of property in the strata sector sold by way of auction in any states.

Nicole Johnston: I'm also seeing it in New South Wales. It's very, very high to buy in that way and I think people are opening themselves up to a lot of problems because they are signing the contract on the day. And so many of them aren't seeking legal advice before they do that which is very problematic.

Amanda Farmer: Yes, I've certainly seen that with friends, with family and even clients who used to come to me after the fact that they say 'I was at an auction and the contracts had been signed and now I want you to do the legal work'. And I would say take you know, 'the most important time has now passed, unfortunately'.

What I do now is purely transactional. The important stuff should have come before getting advice on the property investigating as you say I love that terminology due diligence. All of that needs to be done before you are signing a name to that contract.

Nicole Johnston: Absolutely and I think, you know aside from the advice regarding the contract itself, purchasers really need to get specific advice from very key areas in relation to the owners corporation and so I've just dotted down some notes in relation to that.

Amanda Farmer: Great.

Nicole Johnston: The first big thing I think is the financial health of the owners corporation. So, you need to have a look at the sinking or the maintenance fund; whether the fund has been funded in accordance with a plan or a forecast plan and the extent of any outstanding debts including outstanding levies from other owners. It's really important to get that information.

Amanda Farmer: Yes.

Nicole Johnston: So what you're looking for in that regard is whether the owners corporation raises sufficient levies each year to

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cover the costs. So you want to see the budget, you want to see if they are carrying debt each year and really do have a look at that maintenance fund to see there is definitely money in there ready to expand on capital works. And you want to make sure that the owners corporation doesn't hold meetings quite regularly throughout the year to try and raise special levies to cover the costs that they haven't forecast.

So you want to make sure that there is a really good budget in place that's really been prepared well. So that you know everyone is very clear about how much money needs to be raised and what their contribution will be every year. And not this sort of ad hoc types of expenditures coming up constantly that people are unaware of.

So, you just want to have a look back through the budgets and see have the budgets performing, whether there is sufficient funds in that budget, other additional money that needs to be raised constantly.

So if you see a scheme where every single year there has to be a special levy raised to cover costs that could be concerns about you know how things are being put together from a budget perspective.

You also want to see that other owners are paying their dues on time, their levies are on time because problems will arise if there are a number of owners that constantly fail to pay their levies in a timely manner.

The money to pay bills must come from somewhere and if there are insufficient funds in your administrative accounts to pay those expenses then each owner may have to contribute by way of a special levy for the short fall.

So people just need to be aware if you've got a scheme of a 100 lots for example and you've got 20% of owners that constantly are late in their payment or you've got a number of lot owners who fail to pay that is going to put more pressure on you from a financial perspective. You've got to make sure that you will be able to cover those costs as well.

So that's one thing you would need to look at in the due diligent process definitely how the financial health of the owners corporation is going.

Amanda Farmer: Could you just touch on there, Nicole. Where practically, physically are purchasers looking to get this information?

Nicole Johnston: Yes. So this is very interesting because in my research, I spoke to a number of conveyancers about you know do they advise people to go and have a look at where the information is and undertake that sort of process. I was very surprised what I was hearing and that was that none of them have ever done a search, to have a look at the information.

Amanda Farmer: That is scary.

Nicole Johnston: So in schemes that actually have a strata manager.

Amanda Farmer: Yes.

Nicole Johnston: Often time's records are held by them. So there are custodians of the records. They would have all the information that is available. If you are a purchaser in every single state you are allowed to have a right to inspect the records of the owners corporation and you can go to the strata manager's office, get that information and you can get some advice in relation to those particular documents.

If it's a strata scheme without a manager because you don't have to have a manager there will be someone on the committee that will have those records and again you have a right to inspect them.

There is a bit of a problem and there is a little bit of conflict in the legislation in relation to a pre-purchaser. So someone who hasn't signed the contract as yet.

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Nicole Johnston: Only in some states and I think from memory it may be limited to South Australia. But most states there is no very clear provision in the legislation that would allow a pre-purchaser to inspect the records.

But again that would come back to ensuring that if you have a condition in your sales contract. You have a strata lawyer righting a good clause then they could make sure they could compel the seller to divulge all the records to you so you can still make those enquiries.

So it does a little bit problematic but I still would be very nervous to buy something unless I can have a look at that information. So it's important to speak to the seller about gaining access to those records through the manager. I think that's really vital.

Amanda Farmer: Yes, my memory of the New South Wales legislation and I'm pretty sure this is been carried through in the new Act that's just started is that a lot owner or anyone authorised by the lot owner may inspect the records.

So what I see happen regularly is that you have an email, a fax sent through to the strata manager that is signed by the lot owner that says: "I hereby authorize John Smith who is interested in purchasing my property to access the books and records."

Nicole Johnston: Correct. Yes.

Amanda Farmer: And that all happens quite smoothly.

Nicole Johnston: Yes, that's right. But you want to make sure that they will do that.

Amanda Farmer: Yes, for sure.

Nicole Johnston: The best way to do that is to put it in the contract.

Amanda Farmer: Excellent.

Nicole Johnston: You don't want to leave yourself open to not be able to find that information. But, you would hope that the seller if they want to sell their property that they are open to you know making sure that someone has access to those records. And all the records to make sure that they can get everything. But I was very surprised when I was doing my research that a couple of conveyancers said to me where would we tell people to go and do that?

Amanda Farmer: Oh, dear.

Nicole Johnston: And they were thinking you know maybe Consumer Affairs or it was some other type of entity that they could use which was quite alarming to be quite frank.

Amanda Farmer: Yes, alarming is the word.

Nicole Johnston: Yes.

Amanda Farmer: And also you say you know looking at the records and making sure all the records are there too often I have clients who come to me as lot owners who have gone to inspect the records for whatever reason.

And they've said: 'well, I've got A, B, C and D. and I said, 'what about E, F and G?' 'Oh, I didn't know that was supposed to be in the record' and it's not unless you have that experience with Strata Title Law that you can pinpoint what is missing. Everything that you've got might look great.

Nicole Johnston: Absolutely.



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Amanda Farmer: But not until you speak to your strata lawyer that you say: 'well no, you are supposed to have this following information as well and that is missing and that is a problem'.

Nicole Johnston: Well, that's right. You want people to have a look at the other different contracts that are there in the records to see what type of increases are acquired, what the duties are in relation to for example, resident managers.

There's a range of information that people don't know that they need that they actually do need. And to have a specialist there is the only way to make sure that you are really covering those bases and I've seen this on numerous occasions.

I've done a number of inspections in strata management offices and you can go there and you'll get part of the records and it's only through experience that you can say well, no I'd like the minutes from these years.

Amanda Farmer: Yes.

Nicole Johnston: Or I have a look at committee meeting minutes or I want to have a look at the contracts or the leases relating to this particular part of the property.

Amanda Farmer: Yes.

Nicole Johnston: And often times you know you won't get the full sweep of those records.

Amanda Farmer: Yes.

Nicole Johnston: So it's really important to make sure that you have someone on your side that is really experienced in this area.

Amanda Farmer: And another important point that you raised earlier was about the general state of harmony in the building. Is there any litigation going on?

Nicole Johnston: Yes, so that's right. That's sort of I put that probably into 2 categories the state of harmony within the scheme.

So the records really should give you some indication of how harmonious the community actually is. So, you will be able to see whether there's been breaches of the by-laws that applied to that particular scheme, whether there's been complaints in relation to any of the lot owners or the behavior of other lot owners, what type of other legal matters and those sorts of things should be all detailed in the minutes or you should be able to see from the records. You usually get a pretty good overview of what's really going on from that particular perspective.

So major noise issues, parking issues, pet issues.

Amanda Farmer: Yes.

Nicole Johnston: All those sorts of matters will be highlighted somewhere through those records and should be very evident to a purchaser or its legal representatives who carefully consider the records.

In relation to more litigation matters, yes, you absolutely need to be aware of how much litigation has been undertaken in relation to that scheme and whether there is any current litigation or pending litigation.

And you should seek some advice about the contents or the issues that are affecting those particular litigation matters especially if you're a new lot owner coming in because if it's a protracted legal case you might be up for cost for many years to come.

Nicole Johnston: You need to understand the status of the legal matter whether it's potential for appeals in relation to any of the matters being considered. Because there is lots of costs that go with that.

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Nicole Johnston: You want to make sure that whether or not there are lot owners or other people that are involved in the scheme that have real dispute with the owners corporation or any other lot owners.

So, you just need to be really aware of what you are getting yourself in relation to you know, the litigation side of it as well. It's very important to have a look at the records there.

Amanda Farmer: Thanks for that, Nicole. I think that's a really great high-level overview of what potential purchasers getting into strata should be looking at and we might have some listeners out there who are thinking: jeez, if only I had known.

Nicole Johnston: Yes.

Amanda Farmer: If I had this guidance before I got in because I'm now in a hot bed of trouble.

Nicole Johnston: Yes, sad parts about this are a lot of especially first time buyers or first time buys into this particular property environment. They will go to a scheme or they will go to you know a development, fall in love with the property.

Amanda Farmer: Yes.

Nicole Johnston: They know that's where they want to live and there is pressure tactics from real estate agents as we've all heard about that really push people. People feel compelled in order to secure that property that they need to sign that contract right away.

Amanda Farmer: Yes. Absolutely.

Nicole Johnston: And that's where the danger point is. That's the property for you, you are under pressure to sign, you've been told that there were other people there with the contract ready to sign and you don't want to miss out on that opportunity and you sign on the dotted line and that's what we need to sort of get out to people to stop doing that.

You need to step back. It's a pressure tactic, you need to step back, you need to really consider what you're doing because the ramification may be quite great.

Amanda Farmer: Yes, good advice. What about the solutions? What are the action steps, the quick wins that our listeners can have when they are trying to navigate this part of the purchase process? You just said there to make sure you get some good advice from a qualified strata lawyer. Anything else?

Nicole Johnston: I think even before you go on the journey of purchasing a property you know, there's a number of websites now especially government websites sort of got some really good information and educational tools in relation to owning a lot within a strata scheme.

So I would definitely go and have a look at that first. Because you do responsibilities and legal responsibilities that flow. You cannot simply buy the little apartment and then sort of shutout—

Amanda Farmer: Yes.

Nicole Johnston: the rest of the world in relation to your scheme.

Amanda Farmer: Yes.

You know, you need to be involved in the scheme. You should be voting on the decisions that are being made because you are a part owner in that whole development.

Nicole Johnston: You are not just the owner of the little lot and can isolate yourself away. You are buying more into something



bigger than that and you need to be really aware of that there are legal responsibilities that flow from owning a unit or a lot within this particular property structure.

Amanda Farmer: Yes.

Nicole Johnston: So that's important. Now what you are getting into, get some advice, educate yourself in relation to your responsibilities and what roles you could take within that particular property environment. Then, you do need to do some research on who is going to be your lawyer when you find your property that you want to buy.

I have them all tiered up because especially if it's something by way of auction and you need to get legal advice very quickly. You need to have someone or a couple of people tiered up.

Amanda Farmer: Yes.

Nicole Johnston: Because we may get a contract on a Friday or a Thursday before the auction on Saturday and you want some advice. Sometimes people can't just drop everything and administer notice to give you detailed advice.

So you need to find out who's out there in your particular area that deals with strata schemes or in a firm with people that are strata specialists at least. You need to do your homework and have those people already tied up. Find out how much it cost to undertake the conveyance, how much is the cost to do the due diligence around being an owner in a particular scheme. Have that already so you are not at the mercy of real estate agents.

Amanda Farmer: Yes.

Nicole Johnston: to give those advice. So does your own research before you even start looking for a property in the market that will be my first or couple of my first things that I would say. Make sure that you get someone who is very experienced in this particular areas and definitely you know make sure that you have put money aside for your legals.

Amanda Farmer: Yes, you're realistic about what that's going to cost.

Nicole Johnston: that you are really realistic about the costs.

Amanda Farmer: Yes.

Nicole Johnston: that would be buying a particular property. It's very important.

Amanda Farmer: Yes. Excellent. There are some great tips. Now, Nicole, I asked all of my guests to come on the show what books have had the greatest impact on you and why?

Nicole Johnston: Well, I am a little bit of a fan of the Ken Follett books.

Amanda Farmer: Ah, yes.

Nicole Johnston: Yes. Fall of Giants.

Amanda Farmer: Yes. Good reads. Good stories.

Nicole Johnston: That's right because it is so well researched from a historical point of view.

Amanda Farmer: Yes.

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Nicole Johnston: I'm so involved in the stories. It's great to learn so much from him from the historical point of view.

Amanda Farmer: Yes, history of education.

Nicole Johnston: Yes. So yes they are probably my favourite ones at the moment.

Amanda Farmer: Yes, it's interesting. I'm always interested to hear from academics what they read in their down time and I've got a few academics on the show and often I get academic research papers. They are telling me that's what they reading.

Nicole Johnston: Yes.

Amanda Farmer: And I think, no you should have a break. Give yourself something a bit lighter. So I'm glad to hear that you are into Ken Follett.

Nicole Johnston: That is true. That is true. It's rare that I do get to sit down.

Amanda Farmer: Oh, yes.

Nicole Johnston: It's usually around the Christmas break that I get to read this sorts of books.

Amanda Farmer: Yes. Good on you. Okay, well thank you so much. I know it's such a busy time of year for you. How do our listeners find out more about you and is there anything else you want to add before we wrap up?

Nicole Johnston: You can definitely contact me through all my information on the Deakin University website. So you can just sort of go on to Google and Deakin University then put in any research or any area that you are interested in learning a little bit more about or whose researching that area at the University. I also have LinkedIn so you're welcome to jump on LinkedIn if you're on there and I'm also in a lot of different conferences around the country. So you probably seen my name come up on different conference sites here and there.

Amanda Farmer: Yes.

Nicole Johnston: So that's probably all I have to say at the moment but I just think you know really undertaking some research in getting to understand what getting yourself involved in right from get go is really, really paramount.

Amanda Farmer: Yes, I was just thinking there on that note learning what strata is I think so many purchasers buying in for the first time don't really understand what the structure of a strata scheme is, how it works. And just jumping on Google and saying what is typing in, what is strata?

Nicole Johnston: Yes.

Amanda Farmer: in New South Wales, in Queensland, in Victoria and even episode 001 way back at the beginning of this podcast that was the title of that episode: what is strata and you've got me there for about 15 minutes or so explaining to you the basics of strata.

So if you're jumping into this podcast midway through and you're looking at getting into a strata property for the first time or buying another one and wanting a bit more jump back to that first episode. Episode 001: what is strata and I think that will be a really great place to start.

Nicole Johnston: Yes and I think the more people that are educated and get more involved to strata schemes the better strata schemes will become.



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Amanda Farmer: Absolutely.

Nicole Johnston: Being very clear about understanding how they work that it is a communal property type that you're there to govern your job as lot owner is to govern the scheme and it is a big responsibility. And I understand that it is but it can be really great if like-minded people can come together and make really good decisions about their property. It can work well and I had seen that worked well.

Amanda Farmer: Yes.

Nicole Johnston: That it all comes back to being educated or educating yourself about what you're getting involved in and I think that's really important.

Amanda Farmer: Yes. Excellent. What a great note to end on. Thank you so much, Nicole.

Nicole Johnston: Pleasure. Anytime.

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?

