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**Amanda Farmer:** Hello and welcome, I'm Amanda Farmer and this is Your Strata Property. Hi everyone, solo episode from me this week, it is lovely to be here with you. I'm going to be chatting about community schemes and how they are different to strata schemes. This is a question that has come up a few times now in my inbox, on our Facebook page, "What is the difference between a community scheme and a strata scheme? And Amanda, can you please give some of us who are living in and managing community schemes an overview of what they are, what we need to know, what are the basics of community schemes?" So in answer to that, here is this episode. Now I was asked this question when I appeared on TV, on Sky News Real Estate about this time last year. The interviewers asked me exactly that, what's a community scheme and how is it different to strata schemes.

And there's a little video on our website over at [www.yourstrataproperty.com.au](http://www.yourstrataproperty.com.au), head over to podcasts, and you'll find this podcast Episode number 166, and I will put a link in the show notes to that short video. Just a couple of minutes introducing the concept of community schemes, but I'm going to talk today about the legislation that governs community schemes. What is it, where can you find it? The different terminology that we use when we're talking about community schemes, meetings, by-laws, levies, the management of community schemes, and what happens when it all goes wrong? How do we deal with disputes in community schemes? So to kick things off, a community scheme is created when a community plan is registered by a developer, just like a strata scheme is created when a strata plan is registered. Now why would a developer use a community plan instead of a strata plan?

Well, it much more easily allows for staged development, so the developer can build on part of the land now and save some for later. The developer can build one strata scheme on a particular part of the land, sell off those units, make some money and put that money aside and maybe even some years down the track build a second building, whether that's a strata scheme, or some free standing houses, some townhouses, perhaps some villas, they can develop the land in a way that's a little bit more creative and caters for different types of development. So a large community scheme development might have a number of strata schemes within it and we certainly have examples of that in Sydney. Very large community developments with many, many strata schemes. The development might include free standing houses. Maybe there's a hotel, maybe there's a golf club, a commercial center or a village center with shops and restaurants.

Maybe there's a community hall, there's also private roads and facilities like a swimming pool, and a gym for the entire community to use. So what this planning structure does is it allows different components of the development to be self-managed. So the strata schemes can look after themselves, the hotel can look after itself, the golf club can look after itself, but there is still an umbrella management by the community association. So the community association manages the entire community scheme, just as an owners corporation manages a strata scheme. So it's the community association looking after those roads or access ways as they call them in community schemes, looking after the swimming pool, and the gym. Looking after the community hall and maybe the recreational fields and then the strata schemes within the community are looking after their own common property within the strata scheme in accordance with all the strata laws that you are familiar with under the Strata Schemes Management Act.

Now, I will just say here I am talking about development in New South Wales and I'm going to talk about New South Wales legislation, just to be clear. We have some data from Fair Trading, I believe it is from 2014, so it's a little bit out of date, but it's the most recent we seem to have. That there are currently about 700 community schemes in New South Wales and 1,460 neighbourhood schemes. Now I haven't mentioned neighbourhood schemes, but these are very similar to community schemes, and the reason I think that there's more of these is because the neighbourhood schemes are often developed on the smaller scale. And we see these with villa type developments, townhouse type developments, more of your low rise communities, retirement villages, they'll often be neighbourhood schemes, but they are certainly governed by the same legislation that governs our community schemes.

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## YSP Podcast Transcript: Episode 166. Your essential guide to Community Schemes

**Amanda Farmer:** Now there is a guide on the Fair Trading website. It is from 2009, so it's quite old now, but I had a quick glance, it's not too bad. It is the guide to living in a community scheme, I'll put a link to that guide in the show notes for this episode, so you can download that. Quite similar to the strata living guide or strata living handbook that I think Fair Trading produces. Now the legislation in New South Wales that governs community schemes is the Community Land Management Act of 1989. Yes, we've had this legislation for a while now, and those of you who have your finger on the pulse when it comes to New South Wales legislation and community living may know that there have been plans to review this legislation for quite some time. To answer your question, no, it hasn't gone through. Nothing's changed. There is no draft updated new legislation.

In September 2014 Fair Trading produced a position paper that lots of us made submissions in response to, that paper is still as it was then in September 2014, nothing has changed since then. I'll put a link to the position paper in the show notes. It just sets out a number of areas where the policy makers think we can improve on the community land management act, and I have had a bit of a rumor that this process is starting up again, and they are awesome working groups getting together and talking about the reform of this legislation. So hopefully we're going to see some movement there in the near future. We also have the community land development act of 1989, so that legislation is mainly going to the building, the construction of these community schemes, what kind of plans the developer has to put in, what kind of documents need to be submitted. So when it comes to the day to day management of community schemes, you're really looking at the Community Land Management Act.

We do have a regulation and interestingly enough, the regulation has been revised. We have a new regulation, 2018, I don't remember knowing about this until I just looked it up recently. In September 2018 the new community land management regulation took effect. Now the regulation doesn't say too much, it's a replacement of the old regulation from 2007, that's where you'll find information about record keeping for community associations and neighbourhood associations. Mediation of disputes, the election of the executive committee, insurance, and that's kind of about it. There's not too much in that regulation, is not like our strata schemes management regulation that has lots and lots of important stuff in it, but don't forget that it is there.

When it comes to terminology, you've already heard me refer to the community plan rather than the strata plan, and the community plan is going to show you community development lots and community property. Whereas when we have strata plans, we talk about strata lots and common property. Now a community development lot might have a strata scheme on it. It might have three or four buildings on it that comprise one strata scheme, or it might have a single dwelling, a single house on it. So it's important to understand when we're talking about community development lots, we're not talking about the units that are within the strata scheme that is constructed on that community development lot. We're actually talking about that large parcel itself, but it might not actually be that large because it may just have one house on it but that house is still situated on a community development lot and is subject to the management of the community association.

We do have bylaws in a community scheme, and the bylaws are set out in a really important document called the community management statement, often referred to as the CMS. This is in my view your Bible when you are dealing with community schemes perhaps even more so than strata bylaws are when you're dealing with strata schemes. The first thing I ask strata managers or executive committees of community associations when they're coming to me for advice is where is your community management statement? What does the community management statement say? Because if you have a look at the legislation, the Community Land Management Act, it is not as detailed when it comes to the day to day management of community schemes as our strata legislation is. A lot of the detail about day to day stuff is in the community management statement, really, really important to make sure if you are wanting to find out what's the right thing to do as a manager or as a resident, you're having a look at the community management statement.

That's where the bylaws are, if the bylaws are changed, then it's the community management statement that's being amended. In community schemes we have an executive committee. Yes, they are still called executive committee. They haven't had the same reform that our strata executive committees had. We now call them strata committees. I do wonder if that will be one of the changes proposed in this next round of reforms, and a really important term to get your head around is this, we have members of the community association. Who is a member of the community association? Well to answer this question, we need to go back and have a look at who or what is occupying our community development lots. Do we have a strata scheme occupying one of the community development lots. Then the strata scheme is a member of the community association. Do we have a freestanding house and one proprietor who owns the house that's on that community development lot? Well, then the owner of that house who

also owns the lot itself, the land, is a member of the community association.

In general terms, whoever is shown on the title of the community development lot as the owner, the registered proprietor, that person or entity is the member of the community association. Now this concept is really important because it is only members who are entitled to vote at meetings of the community association. So if you live in a strata building, and you own a unit in a strata building, but your building is one of about 20 other strata buildings, and I'm talking about separate strata schemes, 20 different owners, corporations, and you hold out of the one community association, then it is your strata scheme that is the member of the community association, not you individually. You are a member of your owners corporation. It is the larger management structure above you, the owner's corporation, the strata scheme, the building, that is the member of the community association, and you will have one representative of your strata scheme who is elected to be your representative at meetings of the community association.

So that's a concept that I think many owners miss maybe when they're buying in to strata schemes that are part of community associations, you have this two or three tiered management structure where you have the owner's cooperation governing your building, your common property, what you can do in your lot and in your building and then you have the community association in turn governing the owner's corporation. But bear in mind, as I've said that community development lots may also have freestanding houses on them. So it is certainly the case that a single registered proprietor, an individual who owns a house on a community development lot in a community scheme can be a member of a community association and have a vote personally at meetings of the community association. And not be governed at all by any in between management structure like an owner's corporation.

So on the topic of meetings, community associations do have AGMs, annual general meetings, and a general meeting that is not an AGM is called a special general meeting, an SGM. Community schemes also have a committee as I've mentioned, we call them the executive committee, and they have committee meetings and often those committee meetings and the powers of the executive committee are set out in the community management statement. Now just on the community management statement and the bylaws, it's really important that if you are the owner of a unit in a strata building that is part of a community scheme, you are aware of what the community associations bylaws actually say when it comes to what you can and can't do in your strata building. It is very often the case that the community association will want to and does govern, manage the way that strata buildings look, the things that owners can do or not do on their balconies. The kinds of renovation work that owners can and can't do.

And it's sometimes comes as a surprise to owners and residents in the strata schemes when they find out that not only do they have to get approval from their owners corporation, their strata scheme to do certain things in their home, but also the community association. So they have to actually go through two meetings sometimes to have renovation works approved, for example. And some community schemes even govern the keeping of animals within the community association. So interesting question here, what happens when the strata scheme says you can have a pet, and the community association says, no, you can't. Often the way that one is resolved is the community management statement says to the extent there is conflict between a strata schemes bylaws, and the community associations bylaws, the community associations bylaws prevail. So if you've got a clause like that in your community management statement, then what the community association says is going to be what happens.

Let's talk about levies. Now your experienced strata dwellers will know that you pay strata levies to your owners corporation to deal with all of those common expenses that we have. Do we have the same concept for community schemes? Absolutely we do. And it is the members of the community scheme that are paying levies to the community association. So your owners corporation, if you're in a strata scheme, in a community association, your owners corporation is actually getting levied by the community association, which is above it to contribute to community facilities and community expenses. So the gym, the swimming pool, the nice golf course or country club, if that is community property and is a community expense might be, or it might be privately owned or might not be. Those access ways, the roads that you have to maintain, that all cost money, and your community association is levying the owners of the development lots, the members of the community association to be able to meet those expenses.

And yes, each community development lot has a unit entitlement and that is what sets the amount of the levy. So similar to unit entitlements within a strata scheme, we also have unit entitlements within a community scheme, each development lot has a unit entitlement that is often a cause for some dispute down the track at the end of the development. When the development is complete some members might feel that their unit entitlement is unfairly high when compared with other parts of the development

once they have a look at what has actually been constructed on the development lot. So I know some of you out there will be nodding furiously knowing what I'm talking about. It can be very difficult to change unit entitlements in a community scheme, but important to understand you as a lot owner in a strata scheme for example, that's within a community scheme. You're not paying two sets of levies, one to the owner's corporation, one to the community association. You're not personally doing that. You are paying your levies to the owner's corporation, and the owner's corporation from its fund is then paying a levy to the community association.

Yes, a component of your living that you're contributing is designed to cover that levy to the community association, but the theory is that you are getting the benefit of living in a nicely developed community that often has those unique facilities like a retail area and restaurants and a country club. When it comes to management, community associations do have a manager, they might call them the community manager. They are essentially a qualified strata manager who is used to managing both strata developments and community schemes. Some managers more experienced than others when it comes to managing community schemes and more used to large scale developments and the unique concerns of those large scale developments. Bear in mind that where there might be different strata schemes within the community, those strata schemes may have different managers, so that can make things interesting. When you might have five or six different strata management companies on the same site all managing different entities.

It's always nice when they can work together, not so nice when they can't. They'll often be an estate manager. If it's a larger estate, each of the strata buildings may have their own building manager, but then the community association may engage an estate manager to manage the community property and all of those common facilities. And again, all of the members of the community association are contributing to the costs of that estate manager. Now when it comes to management, I have already mentioned that the community management statement is key. There may be other documents that you should be aware of including things like architectural and landscape guidelines. So many communities will stipulate what color the strata building has to be, what color your blinds and curtains need to be, what kind of trees can be planted, what has to be planted on the pathways and walkways. There will generally be a plan of the road's called an access way plan, and a services diagram, setting out those plumbing, electrical, sewerage necessary services where they are in the community.

Now, be aware that in large scale community scheme developments, two or more entities might share the same facilities. So what I'm thinking of here is a common air conditioning plant that services only two strata schemes, though they might be 20 strata schemes in this community association, but the air conditioning plant just services two of them. Now in that case they will be another level of management just for those shared facilities and that's what we call a building management committee or a BMC. And the role of the BMC is to repair, maintain, look after, raise levies for those shared facilities and just those shared facilities. So a representative of each entity that uses those facilities is going to be on the BMC. The document that creates that entity and sets out all of its rights and obligations is called the strata management statement, or SMS, lots of acronyms for you today.

Now, I bring all of these to your attention because often when you buy in, you're not aware that this structure is there and that you should be consulting all of these different documents or maybe your strata manager is using these acronyms, you're not quite sure what they're about. You might be a strata manager, you might be a little bit inexperienced when it comes to community schemes and you've always wanted to know what these documents are, when they're relevant and sometimes just remembering that they exist can be a bit of a hard task. I know when I was first starting out as a lawyer learning about this stuff, I had to keep coming back to, okay, is this a strata scheme? Is this a community scheme? Am I talking about a community management statement? Am I talking about a strata management statement? It takes a while for that structure to sink in and to get used to. So important to keep coming back to that terminology and being aware of exactly what kind of development you're dealing with.

When it comes to disputes, interestingly, because we still have a 1989 piece of legislation, our community land management act, that legislation still sets out a paper adjudication process in [ink out 00:23:19]. So we used to have the paper process with our strata schemes under our 1996 act, where you would file an application, an adjudicator would consider the documents, consider the response from the other side and make a decision in writing. No need for an appearance before the tribunal. Many of you are all players, hold hands, will be familiar with that adjudication process. We still have that for community schemes, so another important reason to be across exactly what scheme am I in, community scheme or strata scheme because we have a different dispute resolution process in ink out. Always check the CMS, the community management statement if there is a dispute or

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disputes on the horizon because that will often have a dispute resolution process that must be followed.

And interestingly, there is relatively little case law involving community schemes in New South Wales, even though the legislation has been around for many years. When I'm looking up cases, interpretation of different parts of the legislation it is hard to come across cases involving community schemes, but I'm sure we'll be seeing more and more of them into the future. So in wrapping up a few points to remember, important things to be aware of. Point one, don't forget to ask the question, am I dealing with a strata scheme or a community scheme or a neighbourhood scheme, which as I said at the beginning, falls within the same regulatory framework as community schemes. What kind of a structure am I dealing with here? I want strata managers to be asking that question of themselves, residents to be asking that question.

I have seen documents issued by strata managers that should have been referring to community schemes legislation, and were referring to strata scheme legislation. That's a little scary, so I think there are some managers out there who do forget these differences as well. Always refer to the community management statement when you're dealing with a community scheme and be aware of when a building management committee, and a strata management statement may be involved. Now, I would love to receive your specific questions about community schemes, if there's a particular issue that you're facing in your scheme, and you're not quite sure how to resolve that one, it's a little bit unusual and the strata resources out there are not helping you. Where this episode appears on the podcast page on the website, you'll see a section there for comments. Please head over and put your comment or your question in and perhaps Reena and I can cover off some of those questions in an upcoming episode that we'll record together.

And of course the transcript for this episode is always available as the transcripts for all of our episodes. You'll see a link to download the transcript in the show notes, so grabbing the transcript is often a great way to share this information with your fellow residents, committee members or strata manager. Lovely chatting with you today. I'll catch you next time.

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