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YSP Podcast Transcript: Episode 198. The unlimited liability of strata property owners

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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 to this week's episode of the Your Strata Property Podcast. I am Amanda Farmer, and it is my job to guide you through this ever-challenging world of apartment living. We are here each week, demystifying the legal complexities of apartment living, and this week I'm actually bringing you some insights from another podcast. Fancy that. This week I'm featuring The Elephant in the Room Property Podcast, the hosts of which are the lovely Veronica Morgan and Chris Bates. It is not the first time that I have brought you a feature from The Elephant in the Room. We do like to share property wisdom across our channels, and I'm very grateful to Veronica and Chris for allowing us to do that.

This week I am bringing you my own interview with Veronica and Chris. I chatted to them towards the end of last year, 2019, about the little-known concept of unlimited liability in our owners corporations. As you'll hear Veronica say, it is a topic that we were actually chatting about over dinner together, and identifying this issue as something little known but very impactful. Veronica invited me onto her show to delve a little bit deeper.

Now, we talk a fair bit in this episode about the horrors of apartment ownership, and I want to say upfront that it was not and is not my intention at all to scare anyone away from what is still a very good, in my view, investment choice. And you will hear me say that later in the chat with Veronica and Chris. And while I do share the background to some rather scary situations, I want to recognise that those are by far in the minority when it comes to everyday experiences of apartment living. For every poorly-managed building, for example, there are 20 very well-managed buildings, and I know many of you listening to the podcast will be in that category, because you're exactly the type that want to protect your well-managed building and, as managers, hone your expertise.

In this chat with Veronica and Chris, I share my very much outsider perspective on Mascot and Opal Towers, those buildings that we've heard so much about in the media, and play out a scenario for what might happen in a building where certain owners may not have the financial wherewithal to contribute to a very large bill.

One thing that we didn't really get into in the discussion is the availability of strata loans, and that is something that I wanted to flag just at the top of this episode. It will make a little bit more sense when you're listening in. I only say this now because I know I'll get emails from you. When there is a big bill to pay, there is of course always the option of a strata loan to try and share the burden over a longer period of time, for owners who may not be able to have ready access to lump sums. But ultimately, loans do have to be repaid, and I know many of you experienced strata hands will have seen before a situation where owners cannot meet those repayments and need to sell. So what happens if they can't sell? We definitely get into that in this episode of The Elephant in the Room.

If you like hearing me chat with Veronica and Chris in this format, you might want to go back and check out Episode 132 of this podcast, which was my very first chat with Veronica and Chris. And also my often co-host, Reena Van Aalst, chatted with Veronica and Chris on their podcast as well. We're featuring that back in Episode 135. Veronica herself has been a guest on our show, Episode 115 and Episode number 55. You can hear my interviews with Veronica in those episodes of the Your Strata Property Podcast.

Now, you're currently listening to Episode 198, and that means that we have been feverishly working behind the scenes to bring you a pretty cool Episode number 200. In fact, we thought what we put together for Episode number 200 was so awesome, if we do say so ourselves, it is going to come to you in two batches. So look out next week for a very special Episode 199, with part two coming to you in Episode 200. That's all I'm going to say for now. Time to head over to my chat with Veronica Morgan and Chris Bates on their property podcast, The Elephant in the Room. Here it is.



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Veronica Morgan: You're listening to The Elephant in the Room Property Podcast, where the big things that never get talked about actually get talked about. I'm Veronica Morgan, real estate agent, buyer's agent, co-host of Foxtel's Location, Location, Location Australia, and author of a new book, Auction-Ready: How To Buy a Property Even Though You're Scared Shitless.

Chris Bates: And I'm Christ Bates, financial planner and mortgage broker, and together we're going to uncover who's really making the decisions when you buy a property.

Veronica Morgan: Don't forget that you can access the transcript for this episode on the website, as well as download our free Fool or Forecaster report. Which experts can you trust to get it right? theelephantintheroom.com.au.

Chris Bates: Please stick around for this week's elephant rider bootcamp. And we have a cracking Dumbo of the Week coming up. Before we get started, everything we talk about on this podcast is general in nature and should never be considered to be personal financial advice. If you're looking to get advice, please seek the help of a licensed financial advisor or buyer's agent. They will tailor and document their advice to your personal circumstances. Now let's get cracking.

Veronica Morgan: Ever wondered where the buck stops when things go wrong in a strata title building? What happens to the poor last-standing owners in Mascot Towers, for example, if a whole bunch of owners go bankrupt because they can't afford to contribute to major building repairs that will have to be done before they can all move back into their apartments? I was having dinner with strata lawyer Amanda Farmer a while back, and we were talking about the impact of building defects on individual owners. She shocked me when she revealed something about owner obligations that I had no idea about. In fact, I'd wager very few strata owners would know about this. So of course I've asked her to come in and share this knowledge with you.

Now, this isn't the first time we've interviewed Amanda. Back in Episode 25, we talked at length about the hidden dangers of buying brand new and off-the-plan apartments, and of course, we recommend you go back and check out that episode. She's also a fellow podcaster, hosting Your Strata Property, which is an excellent source of information for apartment and townhouse owners, as well as industry professionals. Thank you for joining us again, Amanda. I know you're going to share some big elephants with us today.

Amanda Farmer: I hope so, yes. There's a few to be revealed. Thank you very much for having me on the show again.

Chris Bates: Hey, Amanda, good to see you again. I think we're still seeing the building issues playing out. There hasn't been any major front page news on Mascot and Opal, et cetera, but there's a lot of legislation still going through about what could change. But do you have any insights on the challenges like the Mascot Towers are having, and the owners of those buildings are having trying to get strata to fix the problem, and how it's very hard to fix it?

Amanda Farmer: Yes. Look, I am not directly involved as a legal representative with that building or any of the owners who are in that building, so I can today speak as freely and as speculatively, perhaps, as the general public, which might be helpful or dangerous. That building had some real problems, and you don't need me to tell you that, you just have to read the news. They have to repair their building. That is a legal obligation. They can't avoid that. We have very clear laws in that respect.

It's very well settled in strata law that an owners corporation, a body corporate, has a duty to repair and maintain its property, and it cannot avoid that duty. There is no excuse for not repairing and maintaining. You can't say, "Well, we don't have the money right now. We're getting quotes. It's going to take a bit longer. We're getting a second opinion. The owners don't think it's necessary." If it needs to be done, it has to be done, and if it's not done, an owner can go and seek an order from the tribunal, forcing the owners corporation to do it.

So as I understand it from reading the newspaper articles, they're looking at somewhere between a \$5 million and \$10 million dollar bill to fix this building. They don't have anyone to blame, as far as we can see. There has been some talk about whether the neighbouring property has caused the damage, a development close by. Assuming there's no one to blame and no one else to sue, then these owners are going to have to pay the costs of those repairs, and they are all going to have to contribute to that bill in

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accordance with their unit entitlements. So they all contribute an additional levy over time to meet that bill, and there's no avoiding that.

Chris Bates: It's interesting you say that they have to do it. You buy a car and the tires are starting to get a bit worn, you might be willing to take the risk. I probably should replace the tires, but I don't have to until-

Veronica Morgan: Well, when you go out to Rego, you do.

Chris Bates: Well, Rego, you do. But you don't have to fix it. Let's say it's a dent. If it's not safety, though, let's say it's just visually, like the building needs work, is that a liability and obligation, or is it only if it makes it unsafe?

Amanda Farmer: The obligation is to repair and maintain, so yes. If the paint is peeling, then that's a maintenance issue, and that has to be done. And if you think about it, the logic behind the law is that everybody's there as a co-owner. They're all sharing in the common spaces. You cannot hold other owners to ransom. A small group, which might be the strata committee or a particular person who's got the day-to-day responsibilities for the management, cannot hold the others to ransom by saying, "No, we're actually not going to do that." And you could see that happening. Actually, it does happen. A lot of the work that I do is acting for owners who are trying to get their building to do work, and the building is not getting it done or not doing it properly or doing it on the cheap side rather than doing exactly what's required. A lot of the litigation that we see before the tribunal is on exactly that point.

Chris Bates: So it's just maintenance and safety, but let's say it's anything that's going to potentially add value, but it's not those 2 things. That's when the 75% of unit holders must agree to approve something, yes?

Amanda Farmer: Yes, really good point. If you are improving or upgrading the common property, then you require a special resolution at a general meeting. The common way to think of that is, well, that's a 75% majority vote. It's not actually phrased that way in the legislation. It's no more than 25% voting against the proposal, calculated on a unit entitlement basis. So it's not a show of hands. You look at the value of everybody's lot on a unit entitlement basis. It sounds like a high threshold, but depending on how many turn up to the meeting, as long as you don't have more than 25% voting against, then that will get through.

Veronica Morgan: Oh, wow.

Chris Bates: And so a no-show's just not counted in the figures. So if you really want to impact, you've got to get everyone to rock up at the meeting, which could be quite difficult to do.

Amanda Farmer: Absolutely. I see all the time, large buildings over 100 lots, or maybe even, say, a 40-lot scheme, where you've got 10 people turning up to a meeting, and 6 people are voting in favor and making a decision about quite a serious issue. I've been present in a room where other owners have said, "Hang on, only 6 people voted for that. How is that possible that we're making this decision?" Well, everybody got the notice of meeting. That's part of our legislation, that the notice of meeting has to be issued. There has to be 7 clear days' notice. They've got it in their mailbox or they've got it in their email inbox. They've either read it and said, "Well, we don't care," which I think is most likely the case, or they haven't read it, and they'll complain later when they see the special levy that's been raised to pay for the work.

Veronica Morgan: Wow.

Chris Bates: Let's say you're in a state, let's say you diversify your investments and you go and buy a house in Melbourne, a unit, a strata townhouse. And you can't get there. Can you still be physically present but not present?

Amanda Farmer: You can be present by proxy. You can appoint somebody to be present for you, and you do that by filling in a particular form that's stipulated in the legislation. So it's those who are present in person or present by proxy are those who are counted as attending a meeting.



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Chris Bates: And that proxy, does that have to be a person there? Do you have to get someone to go for you, or can you just be like, "I'm here, but I'm on the phone"?

Amanda Farmer: It has to be a person there; however, we now in New South Wales have a provision for electronic meetings, so meetings that can be held by video, by phone. You can have pre-meeting electronic voting. This all came in with our legislation that started in 2016. We had a complete revision of our Strata Schemes Management Act. But I have to say, I don't see very many of those, and certainly not for annual general meetings, not for big meetings where there's a lot happening on the agenda. We're still holding those in person. But it is possible to hold electronic meetings, but I think we're waiting for a lot of the software and the technology to catch up to that.

Veronica Morgan: It's sort of interesting, isn't it? Because so many strata managers don't seem to really know that much.

Amanda Farmer: That's an understatement.

Veronica Morgan: And then you've got a strata manager managing a building, and you've got an owners corporation full of individuals who probably aren't aware of their own obligations as a committee member. They may not realise that they can actually go and get legal advice or go to a tribunal and actually force all the other owners to actually repair and maintain that building. It's not just misinformation out there, it's a complete and utter lack of information out there, which is alarming. And obviously, that's one thing that your podcast seeks to redress. In fact, that's where I learned a lot of this stuff, actually, from your podcast. Thank you very much.

Veronica Morgan: Back to the Mascot Towers idea, okay, so they have to. How many apartments in that building? Does anyone know?

Amanda Farmer: I think it's about 60.

Veronica Morgan: Right. So 60 owners, split not equally, because there are going to be small apartments, big apartments. I'd hate to own the penthouse in that one. They're going to be told, fundamentally, it's going to be at least this much, possibly more. And if you're going to investigate whether the building next door is at fault, there's a cost involved in investigating that. And maybe we can sue them, maybe we can't. Just add to the bill. Some people are first-time buyers, just bought their first property, used every cent that they had to get in there. Can't live there at the moment, can they? They can't move in there, no, so they're paying rent somewhere. Living with mom and dad, pretty diabolical. If they can't get the extra money, they're going to start going bankrupt, I presume.

Amanda Farmer: Yes.

Chris Bates: Well, is that their only option?

Amanda Farmer: Well, the building can raise money by levying the owners. That's one option. For argument's sake, let's say they have to raise \$10 million to pay for all this. We don't know what everybody's different unit entitlements are, so just split it equally, it's about 150 grand each. Now, you can imagine that there would be plenty of people in that building who would not have \$150,000, certainly not cash. And nobody, I imagine, in their right mind is going to lend on the security of those properties, unless you had some kind of significant equity.

Veronica Morgan: And they probably don't have equity in their apartments anymore anyway, because let's face it, who would buy it?

Amanda Farmer: Exactly.

Veronica Morgan: So they don't have equity, may not have cash.



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Amanda Farmer: Exactly.

Chris Bates: That's a good point, because the reality is, you can't sell it, because no one's going to buy it with cash, unless they buy it for a really cheap price. And not many people have got all cash. They want to borrow, and all the banks have just blacklisted the building. And they might in some cases blacklisted suburbs, but they can't sell it, so that's not even an option.

Amanda Farmer: These people are paying their mortgages. Some of them may be living there. Some of them are investors, and they're having to put their tenants up elsewhere. And they're hit with this \$150,000 levy. They cannot pay it. Now, something that I think most strata owners, and maybe even strata managers, are not aware of is that that owner who cannot pay the levy can actually be pursued by the owners corporation, to the extent of all of their assets. So not just to the value of the property or what equity they have in the property, but if this particular owner has other assets, other investment properties, other properties, those other properties are actually at risk and exposed, because it is that particular owner who can be pursued, as you said, Veronica, to bankruptcy if that's what the owners corporation chooses to do to be able to attempt to recover its levy.

Amanda Farmer: If that owner is pursued to bankruptcy, then trustee in bankruptcy is going to be appointed. The secured creditor is probably going to be the bank, if they have a mortgage. The bank is going to be paid out first from any assets, but let's remember, the only asset is the property, and nobody wants to buy it. So that trustee in bankruptcy is sitting there with what may be, I don't want to say worthless, but an asset that-

Veronica Morgan: A white elephant.

Amanda Farmer: ... cannot pay the mortgage, certainly cannot pay the levy. And the owners corporation is not a secured creditor. They rank far below those who are secured on the title. So this person can't pay their \$150,000 levy. The owners corporation still has to raise \$10 million to pay for the repairs and maintenance, because that is the legal obligation.

Veronica Morgan: Now there's only 59 people to divide the \$10 million on?

Amanda Farmer: You got it. Let's say, serious circumstance, half of the owners fall over that way. You've got \$10 million that has to then be shared between 30 people, and they're all now paying a \$300,000 levy. I don't think many strata owners understand that, and I accept that this is an extreme situation. It's not one that we've really had to think through as lawyers, and certainly haven't seen cases on this before, because usually where there is significant liability like this, there's insurance. It might be a civil liability that you're insured for. It might be some storm damage that you've got building insurance for. But there's no insurance here, and there's no original owner to pursue, because we're out of the warranty period. It's a really unique and scary situation.

Chris Bates: It might be a bit extreme, in terms of the amount and the numbers, but the defects per se and special levies on strata owners isn't unique, though, is it? It might just not be this severe. This is 150, but it's quite common that people are paying special levies for new buildings.

Amanda Farmer: True, and they sell if they can't afford it.

Veronica Morgan: Yes, this is a double whammy.

Amanda Farmer: Yes, and these people are not going to be able to sell, I think, for the foreseeable future, at least not for an amount that they're going to be able to pay out their mortgage.

Chris Bates: The problem is with the selling, though, is that if that's in the strata report, the person buying it is factoring that, usually, if they're reading the strata report, if they even know what a strata report is.

Veronica Morgan: Even if they get this all sorted.



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Chris Bates: How does a owner of a property, though, is there anything that you can potentially keep out of the strata report? Is that possible?

Amanda Farmer: Okay. The idea of a strata report is that somebody, it might be your conveyancer or the lawyer that you engage to advise you on the purchase, or it might be a professional strata records inspector, or it might be yourself, you go to the offices of the strata manager if there is one, the place where the books and records are kept. And you look through the books and records, the minutes of meetings, all the correspondence, the invoices, the insurances. That strata manager should be holding every document, including electronic material, that has something to do with the management of the owners corporation for at least the last 7 years.

What we're finding, and I think you've spoken about this on the podcast before, I've certainly spoken about it on my podcast, is that the records just aren't complete. Strata managers are not keeping accurate records, up-to-date records. When we go and search them, and I do this a lot for clients, we can't find a lot of material that should be there.

Chris Bates: Is there any fines or anything? Because that's probably the issue, right? If no one's going to get in trouble, there's no one really watching what I'm doing, and I've got 20 buildings, or we didn't even do the meeting. All that happens, quite common.

Amanda Farmer: Yes, an owner can seek an order of the tribunal that the owners corporation has failed to keep accurate books and records. I've been involved in a couple of those applications, on both sides, and what usually happens is that the owners corporation says, "Oh, you were looking for something? What were you looking for? Let us know." And you give an itemised list of what's missing, and then the documents turn up, maybe 5 or 6 grand in legal fees later.

Chris Bates: For the owner?

Amanda Farmer: For the owner, yeah. So they throw their hands up and say, "Great for you, Amanda," but the fact that we have to do that, commence litigation to get them to keep proper records, and then they get a slap on the wrist by the tribunal that says, "Oh, okay, well the records are there now. Everybody happy?"

Chris Bates: Oh, yes. Let's say you're buying an older apartment, because you don't want to buy new stuff now, because you've been reading the papers and you understand the risk of defects, et cetera, and you're going to buy an older apartment. And that building isn't very well maintained. It's not too bad. It's just looking a bit tired and things like that. Do you see much success in the purchase of those buildings, going in and influencing the strata to tidy it up and spend money on the building, if it's been neglected for so long?

Amanda Farmer: Yes, you're kind of identifying my investment strategy there. If you know what you're doing and you don't mind the headache, heartache, additional financial contribution, or you understand that it's coming up, I think that can be a very good investment strategy. And I know plenty of knowledgeable strata sector stakeholders who do that, exactly that. They get the place for a bargain, because it's run down, and they use their knowledge and their contacts to improve the building.

Veronica Morgan: Make everyone some money.

Amanda Farmer: Yes.

Chris Bates: You probably don't want to live in that building when you're doing that, though, because-

Amanda Farmer: No, depending on what it is, of course.

Veronica Morgan: Cheap rent, yes, yes.

Amanda Farmer: And I think people need to go in with open eyes on exactly that point. You might say, "Okay, well, there's 500

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grand's worth of rectification work to happen here. That's great. I'm going to negotiate a reduction in my purchase price, then, because I know I'm going to have these special levies coming up. Great, I've got it covered. And then I'm going to live in it." You're not thinking about that day-to-day strain on your life, that you have to live in a construction zone, that you're going to have to go through that process if you're on the committee of getting quotes, explaining to other owners why this is happening, supervising the project if you haven't spent the money for an engineer. And it can go on for years and years.

Amanda Farmer: It's the same with the defects rectification process. The owner's saying, "Okay, well yes, there's defects, but I've got it for a good price. Yes, I bought off-the-plan, but I got it for a good price, because everybody is avoiding off-the-plan at the moment. Great, but can you live with this for the next 5 years?"

Veronica Morgan: It would have to be a really good price.

Amanda Farmer: A really good price.

Veronica Morgan: I mean, that is the thing, though, how good am I? How good are we? How clever are we? We saved 50 grand on a purchase price. It's like, well, what's the cost of your sanity in the next how ever many years?

Amanda Farmer: Exactly. And I see clients who come to me and say, "Amanda, I want to have this filed," or, "I want to get this work done. I want to do A, B, and C." And I say, "Okay, that's fine. This is how much it's going to cost and how long it's going to take." And they stick with it, and we might be 1, 2 years into litigation, and then they say, "Amanda, I can't. This is not worth my sanity, my life. I need to just get back to living as I want to live." And that often means that they sell or they give up. And that's really sad.

Chris Bates: I met a client Friday night, first time I've spoken to her. It was a referral from another client. I started chatting to her, and I said, "Oh, you know, we just had this apartment and renovated it." And she says, "Oh, I'm never buying another apartment." And it was a really nice apartment in Collaroy. The whole experience, she just said it was the people in the apartments that made her life hell for 2 years, because she was going through this renovation. And it was just so bad, because it was in this situation, and she was trying to do all the things to improve the value of the building and was doing what you're saying, is looking at what needed to be done. Because she was seeing about, how can I add value? But then all the other apartment owners made their life hell, and so it just all wasn't worth it.

Veronica Morgan: Yes. Well, you've got to think about, if a building's being left to go to rack and ruin a bit, then those people are quite happy to live in a building that's going to rack and ruin. So you've got to have an uphill battle, don't you? I mean, it's not like they go, "Oh, thanks for coming. We've just been waiting for someone to come and cheer us up."

Amanda Farmer: Yes, definitely. The people who are in the community, the attitude that they have, that is so important, but it's so hard to predict or to know. It's hard to say, but there can be a lot of luck in these decisions. I bought into a building recently, and I feel that I've been very lucky, in that the committee there was welcoming of me and my ideas. It was a little bit, Veronica, like, "Oh my gosh, thank goodness Amanda's here to help us solve some problems." But it could have very much gone the other way. These people could have said, "Yes, Amanda, we hear that. We know we have a legal obligation to do A, B, and C, but we don't want to do it."

Veronica Morgan: Yes, don't care.

Amanda Farmer: And then I could be in litigation with my neighbours. That would be horrible. But I see that in my professional life all the time. So looking at the books and records, I always say looking at the recent email correspondence, because the things that people put on email never ceases to amaze me. They disclose so much about what they think about their neighbours, what's going on day-to-day in the building. And they don't realise that if the strata manager's copied in, it's going to go on the books and records, and someone's going to read that. Maybe the neighbour you're complaining about is going to read that, or their lawyer is going to read that. So that can give you insight into what the community is like, but sometimes having someone who is a

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professional searcher or a strata lawyer look at that for you can help you to gain that insight as well.

Chris Bates: Let's say you've got a client. Let's say they're going it alone, they're buying a nice apartment in the Lower North Shore, like in Mossman or something like that, like a nice brick building with views, et cetera. I'm just trying to get listeners to think about it. If they're going out and they're trying to buy, and they're going it alone. They don't want to use a buyer's agent, even though I've encouraged them. And they want to go down the whole finding the strata records. What should they be doing when they're looking at these buildings? How depth and how do they get access to all that information? Because you can download the strata report, but that's not enough, is it?

Veronica Morgan: Not at all.

Amanda Farmer: Very rarely the case. First of all, I think that they should be engaging a strata lawyer to assist them with their conveyancing. That's number one. Yes, it's going to be more expensive, but that person is going to have the understanding of apartments, that they're going to pick up things that they might see in the records that others will not. And I can say that quite independently, because I do not do conveyancing.

Veronica Morgan: So a strata lawyer who does conveyancing will actually read the report? Because I find that most conveyancers and property lawyers just say, "No, well I don't read the reports."

Amanda Farmer: Yes. A, they should read the report. B, explain it to you. And I even think C, tell you that look, this report is actually not that comprehensive.

Veronica Morgan: What's missing.

Amanda Farmer: And I suggest that I go and have a look. It'll be 2 hours. It'll cost you a little bit more. But I will be able to see what's missing. I will be able to read, for example, the engineer's report that's on file and understand okay, well this engineer has identified concrete spoiling on the balconies. So if they've identified that, then I know from my experience that with this many lots, with concrete spoiling to this extent, that's going to be at least a million dollar project. And that's probably going to take 2 years, even though this engineer said, "Oh, it's a 6-month job." So are you prepared for that, and are you prepared that the million dollars will probably become 1.3?

So as strata lawyers, knowing the other side of the purchase, we can provide that additional guidance. You should be looking for a 10-year capital works fund forecast. That's the 10-year plan that every building must have, by law, in place, that says, "This is the repair and maintenance work that we're going to do over the next 10 years, and this is how much it's estimated to cost." So a professional has come in, walked around the building, and said, "This is how much you're going to spend over the next 10 years, so this is what your levy should be for the next 10 years."

And that will highlight things. Even in a perfectly maintained building, it'll highlight things like well, we're going to be repainting the whole building in 3 years' time. We're going to be replacing the timber windows with aluminum in 5 years' time. So those major things that are coming up. As a purchaser, we're going to be doing the roof. The waterproof membrane hasn't been done for 25 years, so that's ready to go. Oh, I'm buying a top floor apartment, and the waterproof membrane has been leaking. That's interesting. That's something that's going to have to be addressed.

Veronica Morgan: On that, the capital works fund forecast, which used to be the sinking fund forecast, there's varying degrees of value in those, right?

Amanda Farmer: Yes.

Veronica Morgan: Because from what I understand, there's those that just press a button and say, "Well, for a building like that, you would expect..." You know, it's basically all computer-generated, versus one's actually had a quantity surveyor go out to the

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property and actually look at what this property needs and will likely need. There's quite a big difference, but you can tick the box to say they're both there.

Amanda Farmer: Yes, very true. There are companies who can do them quite quickly and cheaply using templates and then tick the box to say yes, that's been done. The other thing to bear in mind is that our legislation says that the owners corporation must follow the plan, as far as reasonably practicable. They don't actually have to follow the plan. And that's been a concern for us lawyers, when our new legislation came in and it said that. Sure, you can have a plan, but if we're ever going to sue an owners corporation for not following that, we haven't seen this play out yet, but we're a little bit concerned about how that legislation is going to be applied.

Veronica Morgan: Well, I often come across where the strata manager says, "Oh, the owners, they've owned that building for a long time, and they know the building. They know it." Well, that's good. It doesn't look like a professional's been in there checking it out at all. It's good that they know it. We came across a townhouse recently where they, what did they not do? Oh, they didn't have an annual fire service statement. They said, "We don't need one for this type of building." And I was like, "Whoa, that doesn't sound right. Is any one of you qualified in this area?" And so you've got an owners corporation that have decided that they know better than what is legislated. So then you go, "Oh, that's nice, isn't it?" I walked into that.

Amanda Farmer: And what concerns me is that these are buildings that are managed by professional strata managers. And I started to say this when I started the podcast, and for many years I'd been working with owners and buildings who were managed by good qualified strata managers who understood the importance of getting lawyers involved, so these were the people that I was dealing with. They knew if there was a problem they couldn't handle, get the lawyer involved. But when I started the podcast, I started communicating more and more with owners who were either self-managed or had strata managers who had no idea. And I didn't realise until then the extent of that problem.

And I get sent notices of meeting that just do not comply with the basics of the legislation. That's a really basic thing for a strata manager, to have to make certain disclosures in a notice of meeting. And I'm looking at this meeting notice that says, "We're going to discuss motion 1, 2, and 3," and that's it. I think, "Well, that's just obviously non-compliant to anybody." And that's the least of the problem. And then you've got strata managers saying, "Oh no, you don't need a capital works fund plan," or, "You don't need an annual fire safety statement." These people are getting paid to do what?

Veronica Morgan: Well, I think in this particular case, the strata manager, whether they agreed or disagreed, I think they were bullied by the owners. So then you get that happening.

Amanda Farmer: You do, and they are concerned to secure the renewal of their contract. We moved to maximum 3-year terms when we got our new legislation, and I think since then we've been seeing a change in behaviour for some strata management companies, where they're very concerned to make sure that their contract is renewed after 3 years.

Chris Bates: Oh yes, in year 3, the reelection, so we might as well just go a bit light this year.

Veronica Morgan: This is a big elephant, isn't it? Those maximum 3-year terms supposedly put in to protect consumers, supposedly?

Amanda Farmer: Yes, and to give them the option to choose a new manager. We used to have automatic rollovers. We'd have 10-year contracts. The price would just keep increasing by 5% every year. And owners said, "Well, we're jack of that. Let's do something about it." Okay, have your 3 year terms, but now we have some strata managers who are taking instructions maybe from one particular committee member instead of the committee as a whole, because they feel that that committee member is going to be one who's going to encourage the others to renew the contract, and they feel have to prove themselves in a shorter period of time. So they might take some shortcuts and say, "Oh no, we don't need a committee meeting. Yeah, that's fine. I'll do that for you."



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Amanda Farmer: Really concerning when other owners see this happening, say, "Well, how come he gets his windows fixed and mine are still leaking?" And they have to come to me and pay my hourly rate to get something done that they are legally entitled to.

Chris Bates: I think there's a problem with new buildings, from memory, that some developers have also got strata companies, and then they're basically employing their own strata company. And then that strata company is then signed up for 10 years on a higher rate, then with above-inflation increases. And so you buy the building, but you don't know you're buying a really expensive strata manager that's then locked in for 10 years that has the interests aligned to the developer and not you. Have you seen that played out, where the conflicts are just way too much?

Amanda Farmer: That was definitely more prevalent a number of years ago. Our new legislation has attempted to address that by saying persons who are connected to the developer shouldn't have those contracts, and that the first contract with the strata manager should only be a one-year contract. So a new building will only ever have a one-year contract. And then they have at their next AGM the option to then engage a strata manager for three years. So if they're not happy with that, say, developer-chosen, because they might not be connected to the developer, but it would certainly be a strata manager chosen by the developer in the first year, if they're not happy then they can decide to change after that first year.

Building managers is another long-term contract, caretaker. And we've had a number of court cases about 25-year caretaker contracts in New South Wales. The other thing that's new is embedded network contracts. This is something that's just emerging, and I've started to give a little bit of advice to buildings on this, where the developer enters into an agreement with an energy provider, and they then purchase the energy from the wholesaler and then onsell it to the lot owners. And those can be long-term contracts. The developer sells the apartment on the promise that oh, but your electricity's going to be really cheap, because we've got this particular contract. And then over time it just skyrockets, and they just can't get out of that contract. That's something that we're just starting to talk about in the sector, about the fairness and the legality of those contracts.

Veronica Morgan: So you're buying an obligation you're unaware of.

Amanda Farmer: Yes.

Veronica Morgan: So tricky.

Chris Bates: I think it's weird, this whole strata law, is that even if you go and do your due diligence and you start to see smoke, I guess, you should really run. But a lot of people don't run, they just go and buy the building, and then they assume that the laws are going to protect them, because they can influence. For example, if you get in the building that really needs maintenance done, and then you go to the strata meeting, you say, "We need to fix all these things," it's very hard then to actually get... because people will sit on the fence, and then years go by. Then you give up and you leave. So do you think that the law is actually strong enough to protect people, or people just really shouldn't buy in those buildings, because they can't rely on the law to save them?

Amanda Farmer: That's a really hard question. The law is definitely there. There are avenues for people to address an under performing owners corporation, but they're not easy avenues, and they're expensive. Our tribunal says, "We're consumer friendly. We don't necessarily want lawyers in the tribunal. You should all self-represent." But this is complex. These laws are complex, and that's the tension, I think, between this is somebody's life, it's their every day, it's what they're living and breathing, but there's this whole layer of incredibly complex legislation that overlays all of that, that they're supposed to understand or to navigate. And our tribunal says you're supposed to do it alone.

And if you do engage a lawyer, the tribunal also says, "Well, that's nice, but we're a no-costs jurisdiction," so it's very unlikely that even if you're successful in getting an order to force the building to do what it always should have done.

Veronica Morgan: It's at your cost.

Amanda Farmer: ... you don't get a cost order in your favour. You're having to pay your 20 grand out of your own pocket for your



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lawyer to run that case. And that's what I tell my clients, "Don't assume that you're going to get this money back. I can get you the result, but you're going to be out-of-pocket for it."

Amanda Farmer: Having said all of that, I'm working with probably the worst 2% of buildings at that level, and there are tenths of thousands of functioning strata buildings in New South Wales, and most of them are doing pretty well. So I don't want to scaremonger here, because my everyday experience is problems and difficulty. There are many, many buildings that are functioning just fine. They're compliant, they've got good managers, they've got money, they're well maintained. I invested in strata myself. I wouldn't talk anybody out of investing in strata just for that reason.

Veronica Morgan: I think it's a good point.

Chris Bates: Yes, just look. See the smoke, go look at it, but it doesn't mean you shouldn't.

Amanda Farmer: And just be armed. Know where you can get information from. Know who you can get it from. Understand that there is this whole world behind these buildings that may impact you, it may not. You may have to look at the strata legislation at some point. You may have to do some Googling about what the building's responsibility is to repair and maintain, you may not. But it does have that added layer that you wouldn't otherwise have in a free-standing home.

Veronica Morgan: Yes, and I think it is important that you don't wishful think it away, because if you do get caught up in a building that needs this issue, it's not solely your responsibility to fix it. So therefore, you've got to lobby and you've got to negotiate and maybe litigate and all that sort of stuff, and it just adds years and years and years to the whole drama of it. What a nightmare. At least in your own home, it's going to cost you, but it's at your discretion.

Amanda Farmer: Yes.

Veronica Morgan: So yes.

Chris Bates: The Elephant in the Room is 100% for you.

Veronica Morgan: The reason that Chris and I do this podcast is because we passionately believe that property buyers can do it better. We really want to help all of you understand all the risks, but also the ways in which you can avoid your elephant making the decisions.

Chris Bates: But what we would love for you to do, is just to share this episode and share other episodes with people around you that are going through the property process.

Veronica Morgan: Give us a review on iTunes. A 5-star, please, would be very appreciated, because this is about making sure that we all benefit from the wonderful information that our guests have been sharing with us.

Chris Bates: Right now, there is still hope out there for a lot of first-time buyers in Sydney, Melbourne, where they're entering the market and they can get into that house. They don't have to buy a townhouse or an apartment. There's still pockets that are still affordable to them in areas that they want to live, which in, say, 2016-17 that was pretty much gone.

Veronica Morgan: It's pretty much going now again.

Chris Bates: It's pretty much. It's not far off. If we get back to 2017 prices again, which is maybe happening-

Veronica Morgan: Well, I would argue we're beyond it in some pockets.

Chris Bates: Yes,



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I agree. And it's already happening, I think, that a lot of first-time buyers and young families are going, "Well, our only option of living in these cities, we can't afford free-standing, and we have to get an apartment or strata." The option of just going down, "Oh, we'll just buy a house," isn't an option. So they've really got to get skilled up in understanding strata, because if they go to their parents, their parents have never heard of strata. Their friends. You know what I mean? There's so much, they just have to know this information. They just don't know where to go.

Veronica Morgan: Yes, I'm interested, though. There's townhouses and there's apartments, and obviously there's apartments and then there's apartments. There's your red 3-story walkup, which is fairly self-contained and pretty easy to navigate. Your townhouses, where effectively you've got your own lot. Everyone's got their own lot, but you've got your own bit of ground, and you're not necessarily sharing roof space or floors or that sort of thing. You might just be sharing walls, maybe, at a common property. Sometimes just a driveway. It can be quite simple. And then you've got really complex multi-use buildings at the far end of the spectrum.

I remember when we interviewed Reena Van Aalst, back in the 30s I think, and we talked about that. We touched on the complexity of being in one of those buildings as well. But from your experience as a strata lawyer, dealing with the 1 or 2% of the buildings where terrible things happen or go wrong, do you come across townhouses very often in that?

Amanda Farmer: I do, yes. You mentioned there about townhouses maybe only sharing part of a wall and having your own backyard. It all depends on the strata plan, of course, what the strata plan says, but quite often those townhouses, the roof is still common property. All of your walls are, your door. You may have the use of the airspace in your front and back yards, but the ground itself is common property. You've got your fences. Those arrangements can sometimes be more complicated, because what you see is not necessarily what you get. It's not necessarily what you might think it is, and when we look at the plan, we say, "Oh, did you realise that the driveway's actually in common?" Or, "You're actually responsible for this part, but you're not responsible for the other."

So I think those developments in particular, people need to be getting specific advice on what does the plan show? What has the agent told me I'm buying? And go and see your lawyer or your conveyancer to make very clear what you are actually buying. It may not be the same thing. But I have to say, some of the most hard-fought, vicious disputes I see are in the smallest buildings.

Veronica Morgan: Really?

Amanda Farmer: A 2-lot scheme is always very difficult, because you can't make any decisions if one person doesn't agree. You need that majority to make everyday decisions.

Veronica Morgan: Well, that's actually interesting, because, say, in our council, I remember some years back they changed the minimum lot size, and so there's a whole bunch of, say, 300 square meter blocks of land that got subdivided into two 150 square meter blocks of land. But because it was sub-200 per lot, the council deemed, well that has to be strata. So you've got quite a lot of 2-lot strata schemes, and yes, there's some implications there too, because of course, you've got to insure the building as one. Then there's obviously you've got maintenance. I mean, quite often they just agree to maintain each their own lot, but what needs to happen in those cases?

Amanda Farmer: Yes. I work with a number of buildings. Opposite to Lockhart council, I think Randwick council for many years would not approve these small developments as strata, and they approved them as company title.

Veronica Morgan: Oh, even worse.

Amanda Farmer: Well, interesting. There's now been a change there, and there's a number of 2-lot company titles that are converting to strata.

Chris Bates: Converting to strata, yes.



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Amanda Farmer: So that's something that I get involved in, and I was involved in one recently where I acted for the lot owner. So not acting for the company, acted for the lot owner, who came to me and said, "Amanda, what is all this conversion about? My neighbour wants to convert. He says it's going to add value to our property. I've been here for 10 years. The kids are going to be here for another 25 years. I don't really care about selling. Is this going to cost me money? What does all this mean?"

And I explained to process to them, and said, "Look, it's basically a paper process. You're filling in forms, you're signing minutes of company meetings, you're making sure your constitution allows you to do it. Of course, things get lodged with the council, with Land Registry Services. But as a brand new strata scheme, you need to develop a set of by-laws." And I said, "This is a really good opportunity, actually, to set the scheme up the way that you want it, and it's a rare opportunity."

And what I suggest to 2-lot schemes is that wherever you can, take responsibility for your own house, for your own side of the property, because the strata plan will be drawn in such a way that your external walls, your ceiling, your dividing internal wall will all be common property, your waterproofing in your bathroom will be common property. Even though your bathrooms might be nowhere near each other, your bathroom waterproofing will be common property. So you would be responsible for maintaining your neighbour's bathroom waterproof membrane. And you think, well, it isn't like they're above me. It's not going to affect me if it leaks. It's on the other side of the building. But what you can do is pass a by-law that says that each owner is responsible for the structure of their own side, and there's only very limited things that we share. And in my view, that will go some way to avoiding dispute down the track and also making sure that you're living as separately together as you can.

Chris Bates: There's positives of that, but then there's potentially negatives, I guess, is that let's say that you do have a great neighbour. They take care of it. What happens if they don't? Can you then force them to really do it? Because the last thing you want to do is sell a semi, and the neighbour's like, "Roof's got a hole in it and [crosstalk 00:49:38]."

Veronica Morgan: You've even got to find the neighbour too, sometimes.

Amanda Farmer: You can put the obligation on them in the by-law to actually do the work. You can also say that anything that impacts the external appearance of the building has to be a joint decision. We don't want a purple house and a brown house, because that just looks weird. So you can really, with the help of someone who knows what they're doing, draft a regime that works and covers off most of the foreseeable issues.

Veronica Morgan: Look, when I was a sales agent, I sold a number of those. I've actually helped some of our clients buy them as well. But back when I was a sales agent, I remember just being told by a lawyer once, "Oh, the only thing you need to worry about is sharing the insurance." And that's what I used to tell buyers, because that's what I was told. That lawyer clearly didn't know any more. There was a lot of lack... "A lot of lack of information" doesn't make sense. There's a lot of lack of information. A lack of information out there about this, so it's good to talk about.

Chris Bates: One thing I don't know about, because it's what we don't know that hurts us, is this unlimited liability, which apparently you guys were talking about.

Amanda Farmer: Yes, that's that concept where... I mean, if we think about it from a corporate law perspective, we have in Australia 3 types of companies. We have limited liability companies, and that's what most of us would understand. That's where we're only exposed to the value of our investment, so it's only the money we've put in our shares or our personal guarantee. If that company gets sued, then we as shareholders are only exposed to the value of that investment. We also have no liability companies, apparently. These are generally mining companies, so mining exploration, oil exploration, high risk speculative companies, quite rare.

And then we have unlimited liability, where you are actually exposed to the extent of your own assets, even if you've only put in 5 bucks or you've only put in 500,000 for your property, and owners corporations are unlimited liability corporations. And the reason that they are is because the building needs to be able to raise levies to meet its legal obligations. It's not express in the legislation that they are unlimited liability, but it does say an owners corporation must repair and maintain, owners must pay levies, so the way



that the owners corporation repairs and maintains is to pay levies.

Amanda Farmer: And if there is somebody who is owed money by the owners corporation, what we do is, we don't actually wind up the owners corporation like you'd wind up a company if a company can't pay its debts. That person who's owed money, who we call the creditor, can actually apply to the tribunal for the appointment of a compulsory managing agent. So a strata manager comes in, like an administrator, with all the powers of the owners corporation, and that manager can then raise levies without the need for a meeting, without the need to discuss with the owners, against the owners' wishes, in order to pay that debt and to pay that creditor. So that's another reason why it's not a normal corporation. We don't have the winding up Corporations Act procedure, we have the Compulsory Manager procedure.

Veronica Morgan: There's no way to shirk your responsibility.

Amanda Farmer: That's it.

Veronica Morgan: So the risks are high.

Chris Bates: So the risk here is, and I might be wrong, is you buy a start building that's got creditors, or it might have creditors that aren't on the books, that what's happening now, you don't know about. There could be, and these aren't really factored into the sinking fund, and there's not enough money there. But then you buy into the building and then bang, you're hit with this. And they'll say, "We owe 500 grand to the window company that wasn't on the books," and then that's a special levy that wasn't even in the strata report. Is that sort of-

Amanda Farmer: That can absolutely happen. Absolutely. Going back to the strata records inspection, you need to be looking to see if there's any litigation on foot. Yes, I hope that goes without saying, but that is a big red flag if there is litigation, whether the owners corporation is suing someone, you're asking the question well who are they suing and why, or whether the owners corporation is being sued. Well, what are the prospects of success on that litigation? What are the lawyers saying? What are the lawyers' fees? Are we going to get those fees back? Are we insured? What is the liability of the owners corporation? Because it's not good enough to say, "Oh well, the owners corporation takes the liability." At the end of the day, you're the owner. It falls to you, because you've got to contribute the money.

Chris Bates: The legal fee is quite humorous. I think that when you go into disputes with-

Veronica Morgan: Humorous.

Chris Bates: with legal issues, you just assume, if you've got a good case and that you win the case, and you've done nothing wrong, that you could always put those legal costs on the person fighting you, and then they'll pay the legal costs. But from my understanding, that very rarely happens. You throw the money in to fight your case, but you could really kiss those legal fees goodbye most of the time.

Amanda Farmer: Yes. In a court, we usually say costs follow the event, so if you win, then you get your costs paid. Even that, however, you never get dollar-for-dollar costs. I shouldn't say never, there's unique circumstances, but you should assume, even if you're successful, you might get 50, 70% of your costs. So you're still going to be out-of-pocket. That's in a court with what I would call good costs rules. In the tribunal, because it's supposed to be consumer-friendly, because somebody shouldn't be punished because they don't have a lawyer and their opponent does have a lawyer, the tribunal says, "We are a no-cost jurisdiction. You will only get a cost order if there are special circumstances." Special circumstances are situations where someone never should have brought the application, they haven't complied with the directions of the tribunal, they had no evidence, they have a completely misconceived vexatious claim.

Veronica Morgan: They're just wasting time, obviously.

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Amanda Farmer: Wasting time. But then you've got to argue that point. You've got to argue for a cost order, and you need somebody who understands the legislation to argue for that.

Chris Bates: As an example, you buy this old building. You think you know all the rules. You go in there, and you get your lawyer to defend all your rules, and it gets dragged out over a space of many years. And then it gets to the final outcome, you get what you want. Everyone's got this special levy and they're going to pay it, but let's say not yours, but some legal fees have accrued. It's very unlikely you're going to get any of that money back, you as an owner of the apartment is basically saying goodbye to that money, yes? Is that...

Amanda Farmer: In rare circumstances, you'll get some money back, but I always tell my clients, yes, don't assume you're going to get anything.

Veronica Morgan: So there's little protection you can rely on. What about Opal Towers, ok? Because that's a situation where there's insurance and there's litigation, and there's people to litigate and organise. Oh, they're litigating against the state government at the moment, aren't they? So what happens in that sort of scenario? And once again, you put your life on hold for how many years? And there's also going to be devaluations of property. And even if you get it at the other end half unscathed, there's certainly no easy path for any owner there. But what's going to happen in that scenario?

Amanda Farmer: Yes. That scenario was different to Mascot, in that they are a new build. The builder and developer was still around and are still around. And the word on the street about Opal is that that builder and developer has been very forthcoming in terms of paying to fix these problems, putting their hands up and saying, "Whatever it takes, we will do it." You see that there's been an inquiry, there's been reports. I think a certifier has been fined. But the builder has said, "We've got a good reputation. We're going to make sure that this is all looked after."

Yes, there is a class action that some of the owners are involved in against Sydney Olympic Park Authority. That's the government agency who were the original owners of the land. The commentary around that scenario is actually, the Opal owners are the lucky ones, if you can believe that. Yes, they all had to leave, and they've got this problem, but they don't have to pay for the fix, because it's within that 6-year warranty, and the builder is going to fix that.

Chris Bates: The reality is, though, unfortunately, they might not pay out of their own pocket, but they will pay when they sell that property one day. It's pretty well publicised, that building, and so a lot of investors will be like, "Well, even if it's fixed, I don't want to buy in that building."

Veronica Morgan: There's another one that's nearly finished, because it was 3 or 4 or something [crosstalk 00:58:10]. Boomerang or something, the next one's called.

Amanda Farmer: Well, let's say 3 or 4 we know about. I know there are buildings' committee members' lawyers out there who say, "If I was in that building, or if this was my building, I'd be keeping it very, very quiet."

Veronica Morgan: Yes, this goes back to a question that you asked earlier, isn't it? Because the thing is that, you know, there's a bit of a conspiracy of silence in some buildings, isn't there? I mean, well, look. At Opal Towers, let's face it, the one next door goes up. You're going to be looking at them going, "Oh I would feel pretty nervous if I had bought off-the-plan in the next one, regardless of whether it's going to start cracking." It's more about, well, how is my value tarnished because of the one next door? So that's sort of an issue there. But there are buildings, and we've heard many anecdotal examples of buildings where they've sort of agreed to keep things out of the minutes, agreed to discuss everything off the record. Have you come across that?

Amanda Farmer: Yes, that's a real problem. And certainly no strata manager or strata lawyer who's aware of that happening would or should be advising buildings to do that. They should be making very clear that accurate records need to be kept. Nothing can be withheld from the records. And that does pose a problem. If people are doing their inspections thoroughly, engaging people to do it, and the information just isn't there, then they can't make an informed decision. Again, I'd say that comes down to having a

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professional experienced person look at the records, because I'd like to think that I'd be pretty on top of, if something was missing, it would stand out. It would stand out to me.

Veronica Morgan: There's some clues in there.

Chris Bates: But the building doesn't have to be strata managed. You could self-manage, yes?

Amanda Farmer: Correct. Correct, Yes.

Chris Bates: So if you are buying in a self-managed building, you would like to think that-

Amanda Farmer: Yes, but there's definite warning signs when you look at self-manage records.

Veronica Morgan: Yes, the shoe box?

Chris Bates: Well, it is, yes. But they'll be out there, and people will be buying them, and they'll be buying them thinking, "Oh, you know, that all looks good, all looks fine."

Veronica Morgan: Oh, they're all so interested. Yes, the levies are low, and they're so interested. And Bill down there in number 3, he knows everything.

Amanda Farmer: Yes, he looks after us.

Chris Bates: Do you have non-disclosure agreements and things like that being used as ways to silence ex-owners?

Amanda Farmer: Ex-owners? People who have moved out?

Chris Bates: People who know information about the building, that we don't want to be publicly information?

Veronica Morgan: You're giving me ideas. Never thought about that.

Amanda Farmer: You're such a conspiracy theorist, Chris. I've never heard of that happening. I have heard of disgruntled owners, whether they're former owners or current or they're tenants, using technology, you know, Facebook and websites and blogs, to cause problems. I always say in response to that, "Well, let's fight fire with fire. Set up a website, set up a blog, and deliver what the real information is." I think you might have to do that. But we do have to comply with the law. We have to comply with the Strata Schemes Management Act. So certainly a building or a committee couldn't agree amongst themselves, for example, to keep things confidential, keep things out of the records, because that would be a breach of the Act.

The only time where an owner may find that they legally cannot access records is where the records are legally privileged. It is advice that's come from a lawyer acting for the owners corporation, and that advice can be the subject of privilege and therefore withheld, but only withheld from the owner who's on the other side of the litigation, right? If we're suing someone because they haven't paid their levies, then I've given advice to the owners corporation about this is how you do it. Then that person in lot 3 who hasn't paid their levies and we're suing, they can't see my advice.

Chris Bates: Can't see what you advise.

Amanda Farmer: But everyone else in the building can see my advice, because they are part of the owners corporation, so they're all jointly paying my fees. So they can all see my advice, and that's a really important point to make, because so many buildings and managers don't understand that and overlook it and say, "Oh, well that's privileged, so it goes in the privileged file so no one can see it." It's something to be aware of when you're searching records, to say, "Well, hang on. I can see in the financials that you

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just paid \$20,000 to a lawyer. What's that for?" "Oh no, that's litigation. That's privileged." "Well, hang on. Does it involve the lot that I'm about to purchase? Does it involve lot 3?" "Oh no, it involves lot 14." "Well, then I can see it, because it's not privileged as against me, it's privileged as against lot 14." And we've got cases on that.

Veronica Morgan: You got to know what you don't know.

Amanda Farmer: Yes.

Veronica Morgan: It's a murky, murky world.

Chris Bates: Every week we hear incredible stories of the dumb things property buyers do, dumb things that end up costing a whole lot of money and/or a whole lot of stress, mistakes that can be avoided. Please, Amanda, can you give us an example of a property Dumbo? We can all learn what not to do from these stories.

Amanda Farmer: I do, and I think we might have touched on it a little bit earlier. I was recently helping a building who had decided that they wanted to pay out their strata loan, so they'd borrowed, I think it started at about a million dollars, to do some major rectification works. They had been making the minimum repayments, and they got it down to about 500,000, and then a group of owners said, "You know what? We just want to clear the loan. We just want to pay it out."

So in order to do that, you have to go to a general meeting, pass a resolution to pay the loan. The committee did some research about the options. We could pay half the loan now and half the loan next year. We could pay the whole loan out. Sent out the notice of general meeting. The options were on the agenda. I recommended that they do a very clear covering letter, explaining, "This is what's going to happen at this meeting. We really recommend that all owners attend this meeting, because this is an important decision. Here's a schedule of what your levies might look like if we decide to pay out the loan. So someone in a 2-bedroom is having to pay \$7,000, someone in a 3-bedroom is having to pay \$10,000 over two special levies, so it's significant."

The meeting happened. It's about a 40-lot scheme. I think they had about 10 people turn up in the room, and this is the example of where 6 people made the decision to pay out this loan. I warned the committee, and I said, "Okay, that's fine. When the levy notices go out in a month's time, just put your flak jacket on and just be prepared, because you're going to get emails. Your strata manager's going to get phone calls. 'What is this? Why am I being billed \$7,000? How did you make this decision? When did you make this decision?'"

The property Dumbo for me is that person who doesn't read the notice of meeting, doesn't attend the meeting, and then later complains about the decision that's been made by what really ends up being a minority, because they are completely disengaged until it comes time to pay some money.

Veronica Morgan: Because the minority are the ones that are interested, so they're the ones that turn up.

Amanda Farmer: Yes.

Chris Bates: That's twice now, you said 6 of the 10, so the 4 said no? Shouldn't that have then been that 40%-

Veronica Morgan: It's their lot entitlement, though.

Amanda Farmer: It's an ordinary resolution, yes, so just a majority can make that decision to pay out the loan.

Chris Bates: Right. So it doesn't need to be 75%?

Amanda Farmer: Didn't have to be a special resolution.



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Chris Bates: Right, okay. Wow, so even then. You'd think that it would be 75%. So there's certain resolutions that only need 50%.

Amanda Farmer: Yes, most.

Chris Bates: Well, so there you go. And that's not much, you know.

Amanda Farmer: Yes, levies are ordinary resolutions, so 51%. And on a show of hands as well, unless somebody calls for a poll.

Veronica Morgan: Oh, right, so it's not about the-

Amanda Farmer: Not about unit entitlement on an ordinary resolution. Someone can call for a poll, and then it's on a unit entitlement, which may or may not change the voting. But these are serious decisions that are being made.

Chris Bates: Isn't it 7 days they have to give notice?

Amanda Farmer: 7 clear days, yes.

Chris Bates: So if you're on holidays and you don't check your strata, and they organise a special meeting, and you're on holiday for two weeks and not have any internet, you could be... Yes.

Amanda Farmer: You could be out of the loop.

Veronica Morgan: Get home with a \$10,000 bill. That'll be in your letterbox.

Amanda Farmer: Yes, that's true. Just being aware that that's a possibility is a step in the right direction.

Chris Bates: Yes, because especially if you do get it in the mail, I don't know about you, go out and check my mail every 7 days. It's very easily you could even miss the 7-day window. So a learning there for a lot of strata owners is, don't delay opening these letters, because you know, like-

Amanda Farmer: Or give your strata manager your email address as an address for service. That's often the way.

Chris Bates: And open the email.

Amanda Farmer: And open your emails. Yes, please.

Veronica Morgan: I know they're pretty wordy and they're a little bit boring and all that sort of stuff, but they're pretty important.

Amanda Farmer: That's interesting, though, because you do find in some buildings you get these really very, very interested and very, very involved, and very, very motivated people, and there are a little gang of them. And so they actually get their way, because they know how to game it. A lot of them are retired. And other residents try to infiltrate that group and try to get themselves on the committee, and they find that hard to do. Yes, definitely, that happens, and that's tricky to navigate.

Chris Bates: Sometimes you like those people, though, if you're an owner in those buildings, especially if they're doing things by the book and they're trying to take... Yes, they might be, you have to keep putting money in your pocket, but at least you know your asset's getting looked after.

Amanda Farmer: Yes, at least somebody's doing something.

Veronica Morgan: That's true, although I heard of one building where they deliberately did not... actually, I've heard of this a few



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times... they kept the strata levies really, really low, and they just raised a special levy for whatever they decided to do, and so then it was like, "Oh, we decided that we wanted to solar heat the pool." And so ok, we just raise a levy, and I don't even swim.

Amanda Farmer: That's been part of the policy behind the capital works fund forecast, because a lot of buildings were saying, "Why would we want money sitting in our capital works fund when we could have it sitting against our mortgages or invested another way?"

Veronica Morgan: Exactly.

Amanda Farmer: So they didn't have adequate levies, and they'd say, "Oh, we'll raise a special levy when we need it." But new people buying into the building, young families, they can't handle those surprises.

Veronica Morgan: No, and they're also paying for the sins of the fathers in a way, because it's like this same townhouse complex that says, "No, we don't need an annual fire statement." They also said, "Well, there's no need to follow the capital works fund forecast, and we'd rather have the money sitting on our mortgages." I'm like, "Well, that's fine. What about the next buyer that comes in, and if you had actually been putting aside, putting aside, putting aside, this owner would have made a contribution for all the things, the wear and tear that they'd had the benefit of, and now they get to leave scot-free?" And this person actually will have to back date, effectively, and pay a premium over on the top of the purchase price, because there's no investment in that.

Amanda Farmer: Yes.

Chris Bates: And the big things are, like what are they from your experience? You've seen big ticket levies in older buildings, like concrete cancer, like rust in the bricks, and things like that?

Amanda Farmer: Absolutely. Yes, roof membranes, windows.

Chris Bates: Windows.

Amanda Farmer: Windows, yes.

Chris Bates: Any other big ones you can think of?

Amanda Farmer: Litigation. I have to say, litigation, it's awful.

Chris Bates: Just internally, disputes and people just can't agree with each other?

Amanda Farmer: Yes, yes. I've seen special levies of 300 grand to pay lawyer's fees. I mean, that's just-

Explaining to the owners that you need to raise 100 grand for a new waterproof membrane is one thing. Explaining we're raising 300 grand to pay a lawyer to fight with lot 4 about their retail shop that's opening, and we don't want them to have outdoor seating, so we're all in the Land and Environment Court. And now they're saying, "Hang on a sec. Why am I paying 20 grand towards it? Does it really matter? Do I care? I actually like the guy down there. He makes good coffee." So you end up with those kind of...

Chris Bates: That's a good point as well. Commercial mixed with residential, you're buying a completely different beast, aren't you? There's some challenges with that. Yes, it's not just the roof. There's so many other elements you got to look at.

Veronica Morgan: The fourth layer of government.

Amanda Farmer: That's it, yes. Keeps us busy.



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Veronica Morgan: Oh, Amanda, thank you so much for coming back.

Amanda Farmer: My pleasure.

Veronica Morgan: This unlimited liability thing. My ears pricked up when you mentioned that to me, and I'm so glad you've come and shared and explained it, really what it is you're buying into when you're buying strata, I mean, the liabilities or the obligations that an individual owner has, worst case scenario. But hey, it could happen.

Amanda Farmer: Yes, and being aware that it could happen is the first step.

Veronica Morgan: Yes.

Chris Bates: Yes, and a few hundred dollars or \$500 or whatever it is upfront, due diligence, and if you have to go through that and you find out something that you didn't really want to know, because you didn't really want to know it, you want to buy the apartment, that's okay. You'll have to just wait and find another one. Deal with the pain today, not tomorrow.

Amanda Farmer: Yes.

Chris Bates: Thank you very much.

Amanda Farmer: My pleasure.

Chris Bates: We want to make you a better elephant rider, and this week's elephant rider training is...

Veronica Morgan: Well, following on from some of the conversations we had with Amanda just now around due diligence and strata reports and the like. And we sort of touched on it, but we didn't talk about it in great depth, and that is, when you do your due diligence before buying a property, it doesn't have to be strata, it could be a house, where you've done a building and pest inspection, and when something comes back that, I guess, doesn't really answer the questions you should be asking, or it actually raises an area of doubt, or you don't understand it, is another one, sunk cost. Sunk cost bias is a problem for property buyers, because you spend your \$300 on a report, and you feel like you're committed to buying the property, because you've spent the money doing the due diligence.

And I just want a little bit of a reframe, because it happens with building and pest inspections as well. Well, I've paid now, and even though I know it's got termites, I might knock 10 grand off the price, for argument's sake, but I paid for a building inspection, so I should still buy it. I just want to reframe a bit. The reason that we spend the money and invest the money on these building inspections or strata reports is because we want to find out if there's a reason why we shouldn't buy the property, and so we have to be very aware of this sunk cost bias that we have, to think that just because we spent that money, that money is gone. That money is gone, and if we are wise, we will spend that money that is gone wisely, i.e., listen to whatever it is that we've found out when we've actually gone and got that information.

So just be mindful that it is a bias that we all are susceptible to. It's the elephant. Once again, we talked about it back in Episode 1 with Simon Russell about various biases that we are impacted and influenced by, and sunk costs was one of them, And it does happen when you're doing due diligence on property buying.

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